The NORTH CAROLINA REGISTER

IN THIS ISSUE . . . . . .

EXECUTIVE ORDERS

IN ADDITION
- EHNR
- Final Decision Letters

PROPOSED RULES
- Cosmetic Art Examiners
- Environment, Health, and Natural Resources
- Human Resources
- Justice
- Labor
- Mortuary Science
- State Personnel

RRC OBJECTIONS

RULES INVALIDATED BY JUDICIAL DECISION

CONTESTED CASE DECISIONS

ISSUE DATE: September 1, 1993

Volume 8 • Issue 11 • Pages 876 - 1006

NORTH CAROLINA REGISTER

Publication Schedule

(July 1993 - May 1994)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing *15 days from notice*	* End of Required Comment Period *30 days from notice*	Last Day to Submit to RRC	** Earliest Effective Date
8:7	07/01/93	06/10/93	06/17/93	07/16/93	08/02/93	08/20/93	10/01/93
8:8	07/15/93	06/23/93	06/30/93	07/30/93	08/16/93	08/20/93	10/01/93
8:9	08/02/93	07/12/93	07/19/93	08/17/93	09/01/93	09/20/93	11/01/93
8:10	08/16/93	07/26/93	08/02/93	08/31/93	09/15/93	09/20/93	11/01/93
8:11	09/01/93	08/11/93	08/18/93	09/16/93	10/01/93	10/20/93	12/01/93
8:12	09/15/93	08/24/93	08/31/93	09/30/93	10/15/93	10/20/93	12/01/93
8:13	10/01/93	09/10/93	09/17/93	10/18/93	11/01/93	11/22/93	01/04/94
8:14	10/15/93	09/24/93	10/01/93	11/01/93	11/15/93	11/22/93	01/04/94
8:15	11/01/93	10/11/93	10/18/93	11/16/93	12/01/93	12/20/93	02/01/94
8:16	11/15/93	10/22/93	10/29/93	11/30/93	12/15/93	12/20/93	02/01/94
8:17	12/01/93	11/05/93	11/15/93	12/16/93	01/03/94	01/20/94	03/01/94
8:18	12/15/93	11/24/93	12/01/93	12/30/93	01/14/94	01/20/94	03/01/94
8:19	01/03/94	12/08/93	12/15/93	01/18/94	02/02/94	02/21/94	04/01/94
8:20	01/14/94	12/21/93	12/30/93	01/31/94	02/14/94	02/21/94	04/01/94
8:21	02/01/94	01/10/94	01/18/94	02/16/94	03/03/94	03/21/94	05/01/94
8:22	02/15/94	01/25/94	02/10/94	03/02/94	03/17/94	03/21/94	05/01/94
8:23	03/01/94	02/08/94	02/15/94	03/16/94	03/31/94	04/20/94	06/01/94
8:24	03/15/94	02/22/94	03/10/94	03/30/94	04/14/94	04/20/94	06/01/94
9:1	04/04/94	03/11/94	03/18/94	04/19/94	05/04/94	05/20/94	07/01/94
9:2	04/15/94	03/24/94	03/31/94	05/02/94	05/16/94	05/20/94	07/01/94
9:3	05/02/94	04/11/94	04/18/94	05/17/94	06/01/94	06/20/94	08/01/94
9:4	05/16/94	04/25/94	05/02/94	05/31/94	06/15/94	06/20/94	08/01/94

Note: Time is computed according to the Rules of Civil Procedure, Rule 6.

* *An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.*

** *The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.*

Revised 07/93

EXECUTIVE ORDER NUMBER 21
LOCAL GOVERNMENT PARTNERSHIP COUNCIL

WHEREAS, units of local government are political subdivisions of the State of North Carolina and the State is obligated to provide support to these units; and

WHEREAS, the Governor recognizes the need to improve and strengthen the relationship between state, county, and municipal governments; and

WHEREAS, the Governor desires to identify and implement strategies that will enable the administration, the General Assembly and local governments to work together for the benefit of the entire State; and

WHEREAS, the Governor recognizes the current problems facing local governments and pledges to work in cooperation with local officials to find appropriate solutions; and

WHEREAS, the Governor appreciates the vital role that local governments can and should play in the future growth and development of the entire state; and

WHEREAS, the Governor encourages local officials to join hands with state government officials and the state legislature to provide a brighter future for all North Carolinians;

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of the State of North Carolina, **IT IS ORDERED:**

Section 1. Establishment and Members.

There is hereby established the North Carolina Local Government Partnership Council ("Council") consisting of eighteen members. The Council shall be composed as follows:

(a) three members representing county governments selected by the Governor from a listing of qualified persons submitted by the North Carolina Association of County Commissioners;

(b) three members representing municipal governments selected by the Governor from a listing of qualified persons submitted by the North Carolina League of Municipalities;

(c) four at-large members appointed by the Governor;

(d) two members of the North Carolina Senate appointed by the President Pro Tempore of the Senate;

(e) two members of the North Carolina House of Representatives appointed by the Speaker of the House;

(f) the Secretary of the Department of Environment, Health, and Natural Resources or his designee;

(g) the Secretary of the Department of Transportation or his designee;

(h) the Secretary of the Department of Human Resources or his designee; and

(i) the Lieutenant Governor, or his designee.

The Executive Director of the North Carolina Association of County Commissioners and the Executive Director of the North Carolina League of Municipalities are invited to serve and the Governor's Director of Intergovernmental Relations shall serve as ex-officio members of the Council.

Section 2. Chair and Terms.

The Lieutenant Governor shall serve as Chair of the Council. The Vice Chair of the Council shall be a municipal or county official selected by the Governor. Annually, after the first Vice-Chair is selected, the office shall rotate between officials representing municipalities and counties. Appointees shall serve two-year terms, with no appointed members serving more than two complete, consecutive terms on the Council. Members designated by their office shall serve terms for the duration of that office.

The Council shall meet at least three times per year and may hold special meetings at the call of the Chair or of the Governor.

Section 3. Purpose.

The purpose of the Council shall be to advise the Governor, his Cabinet, other state agencies, local governments, and the general public about programs, policies, and practices affecting local governments in North Carolina. To accomplish this purpose, the Council may:

(a) identify opportunities for state-local cooperation;

(b) review proposed programs and policies;

(c) offer recommendations;

(d) advocate on behalf of local governments;

(e) assist the Governor's Office of Intergovernmental Relations in matters related to state-local relations;

(f) undertake any studies or actions request-

ed of the Council by the Governor;

(g) recommend to the Governor actions affecting state-local relations which will benefit local governments throughout the state;

(h) meet with the Advisory Budget Commission during that Commission's examination of state budget needs; and

(i) advise the Advisory Budget Commission of local government concerns related to the state budget.

Section 4. Administration.

The Council shall be located in the office of the Governor. Administrative support and staff for the Council shall be provided by the Governor's Office of Intergovernmental Relations. It is the responsibility of each cabinet department head to advise the Council of their proposed policies and plans. The elected heads of the Council of State departments may, and are hereby invited to, join in the effort represented by this Order. All services of the Council available to the Governor under this Order shall be available to each of the heads of the aforesaid departments so electing to participate.

The members of the Council shall receive reasonable travel and subsistence expenses in accordance with state law.

This order shall be effective immediately.

Done in Raleigh, North Carolina, this 12th day of August, 1993.

EXECUTIVE ORDER NUMBER 22
EQUAL EMPLOYMENT OPPORTUNITY

WHEREAS, the State of North Carolina is committed to providing equal employment opportunities to all present and prospective state employees without regard to race, color, religion, national origin, sex, age or disability; and

WHEREAS, the State recognized that effective and efficient government requires the talents, skills, and abilities of all available human resources; and

WHEREAS, demographic, educational, economic, technological, and lifestyle trends are dramatically reshaping the labor force that will be available to state government now and in the future; and

WHEREAS, these trends challenge state government to make full use of the productive capabilities and skills of all of our citizens; and

WHEREAS, this administration believes that the personnel practices of state government should be nondiscriminatory and promote public confidence in the fairness and integrity of government; and

WHEREAS, fair and impartial treatment of all employees in all terms and conditions of employment is in the best interest of the State; and

WHEREAS, this administration endorses taking positive approaches to ensure equal employment opportunity and a state government workforce which is representative at all occupational levels of North Carolina's citizens; and

WHEREAS, positive and aggressive steps by management are necessary in preventing discrimination, promoting fairness, and supporting a work environment where employees are valued for their strengths and encouraged to achieve their fullest potential; and

WHEREAS, citizens of North Carolina should contribute to the equal employment opportunity efforts of our State; and

WHEREAS, the State Personnel Commission has established policies and programs for state government to achieve these goals.

NOW THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of North Carolina, **IT IS ORDERED:**

Section 1. Equal Employment Policies and Programs.

The policies and programs that have been adopted by the State Personnel Commission and approved by the Governor represent the commitment of this State and must be strictly followed and fully complied with by every state agency, department and university.

Section 2. Administration.

Each agency, department head and university chancellor is responsible for the successful implementation of these policies and programs and this Order, and shall:

(1) Designate an official at the deputy secretary or assistant secretary level to assume responsibility for the operation and im-

plementation of their equal opportunity plan and program.

(2) Designate the appropriate number of full-time equal employment opportunity (EEO) officers to perform the full range of EEO responsibilities for every 500-1500 employees to ensure the development and implementation of an effective EEO plan and program which achieve the EEO objectives. The Office of State Personnel is authorized to review and approve the appropriateness of the number of designated EEO officers considering organizational size, structure and geographical dispersion. Agencies, departments or universities with 1-499 employees shall designate a part-time EEO officer who shall have direct access to the agency, department or university head or their designee as indicated in subsection (1) above.

(3) Ensure that the EEO officers report directly to the agency, department or university head or designated deputy or assistant secretary for EEO purposes.

(4) Ensure that the agency's, department's or university's commitment to equal employment opportunity is clearly transmitted to all employees.

(5) Provide adequate resources and support to the EEO officers in the development and implementation of the EEO plan and program designed to achieve the equal opportunity goals.

(6) Ensure that personnel policies are administered fairly and personnel practices are nondiscriminatory.

(7) Ensure that each supervisory and management employee has, as a part of their performance management work plan, responsibility to comply with EEO laws and policies. and,

(8) Provide reasonable accommodations for otherwise qualified individuals with disabilities who can perform the essential functions of the job in question if such accommodations are made. These accommodations shall be in accordance with the Americans with Disabilities Act (ADA) Title I final rules and regulations.

Section 3. Office of State Personnel.

The State Personnel Director shall:

(1) Provide technical assistance, resource/support programs, monitoring and evaluation to assist agencies, departments, and universities in achieving their equal employment opportunity goals.

(2) Review and approve all EEO plans.

(3) Conduct on-site audits of agency, department, and university EEO programs and their administration to determine their effectiveness.

(4) Develop systems to review, analyze, and evaluate trends and make recommendations to the Governor regarding all personnel policies and practices which affect all terms, conditions, and benefits of employment.

(5) Design and implement monitoring and reporting systems to measure the effectiveness of agency, department and university EEO programs and personnel practices.

(6) Provide EEO training to managers, supervisors and employees.

(7) Develop, with the approval of the Governor and the State Personnel Commission, state government-wide EEO policies, programs and procedures.

(8) Develop and promote programs and practices to encourage fair treatment of all state employees.

(9) Compile, analyze, and submit reports to the Governor which demonstrate the State's EEO progress.

(10) Establish procedures for determining reasonable accommodations which result in an uniform and fair process for applicants and employees with disabilities. and,

(11) Develop an EEO plan for state government.

Section 4. Reports and Records.

The State Personnel Director shall submit quarterly reports to the Governor on each agency's, department's and university's progress to ensure that its workforce is representative of the citizens of North Carolina and that all terms and conditions of employment are fair and non-discriminatory.

Section 5. Citizen Contribution.

The North Carolina Human Relations Commission shall provide oversight and review of state government's implementation of the EEO program and goals, thereby assuring citizen contributions to the program. The Commission shall advise the Governor and the State Personnel Director on the progress and make recommendations for their

consideration.

Section 6. Veterans' Preference.

Nothing in this Order shall be construed to repeal or modify any federal, state or local laws, rules or regulations creating special rights or preferences for veterans.

Section 7. Effect on other Executive Orders.

Executive Orders 18 and 76 of the Martin Administration are hereby rescinded.

This Executive Order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 13th day of August, 1993.

This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

U.S. Department of Justice

Civil Rights Division

JPT:MAP:NT:lrj
DJ 166-012-3
93-1962

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

August 2, 1993

DeWitt F. McCarley, Esq.
City Attorney
P. O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. McCarley:

This refers to ten annexations [Ordinance Nos. 2589 through 2591, 2601 through 2602, 2619 through 2622 and 2624 (1993)] and the designation of the annexed areas to single-member districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on June 2, 1993.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

By:

Steven H. Rosenbaum
Chief, Voting Section

U.S. Department of Justice

Civil Rights Division

JPT:MAP:CGM:lrj:tlb
DJ 166-012-3
93-2373

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

August 9, 1993

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P. O. Box 1151
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to Chapter 306 (1993), which provides for a seven-member city council elected from two double-member districts with three at large (with no designated posts except for the separately designated position of mayor), the districting plan, the direct election of the mayor with a 40 percent plurality requirement, four-year terms, staggered terms for councilmembers (with the at-large members elected concurrently), candidate qualification procedures, general election and runoff election dates, and procedures for filling vacancies for the City of Reidsville in Rockingham County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on July 13, 1993; supplemental information was received on August 4, 1993.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

By:

Steven H. Rosenbaum
Chief, Voting Section

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

AVAILABLE FOR REVIEW AND COMMENT:
the
COMPREHENSIVE CONSERVATION and MANAGEMENT PLAN
for the ALBEMARLE-PAMLICO ESTUARINE STUDY
09/01/93

The Albemarle-Pamlico Estuarine Study, a program of the U.S. Environmental Protection Agency and the N.C. Department of Environment, Health and Natural Resources, is concluding its five year effort to develop a management plan to guide the Albemarle-Pamlico Estuarine Study communities and state and federal Agencies in protecting the estuary.

As required by Section 320 of the Clean Water Act, the Albemarle-Pamlico Estuarine Study Management Conference has prepared a Comprehensive Conservation Management Plan (CCMP) that details the condition of the estuary and lays out an agenda for cleaning up and protecting the estuary.

The draft CCMP is available for public review and comment.

LOCATION: The CCMP may be reviewed at or obtained from the Albemarle-Pamlico Estuarine Study Public Involvement Office. See below for address.

HEARING: Five public hearings have been scheduled for the following dates and locations: (All begin at 7:00 p.m.)

October 12, 1993 MOREHEAD CITY
Crystal Coast Civic Center
Arendell Street
Morehead City, N.C.

October 13, 1993 GREENVILLE
East Carolina University
Regional Development Inst.
First & Reade Streets
Greenville, N.C.

October 14, 1993 RALEIGH
Ground Floor Hearing Room
Archdale Building
512 Salisbury Street
Raleigh, N.C.

October 18, 1993 EDENTON
Swain Auditorium
(Old Swain School)
Court Street
Edenton, N. C.

October 19, 1993 KILL DEVIL HILLS
Holiday Inn
1601 S. Virginia Dare Trail
Kill Devil Hills, N.C.

CONTACT: Joan Giordano, Public Involvement Coordinator
Albemarle-Pamlico Estuarine Study
1424 Carolina Avenue
Washington, North Carolina 27889
(919) 946-6481

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to amend rule cited as 10 NCAC 3R .0305.

The proposed effective date of this action is January 4, 1994.

The public hearing will be conducted at 10:00 a.m. on October 29, 1993 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, NC 27603.

Reason for Proposed Action: To adopt as a permanent rule, the temporary rule was adopted effective August 11, 1993, which revised the minimum and maximum fee of Certificate of Need (CON) applications to be consistent with Senate Bill 204 which was ratified on July 18, 1993.

Comment Procedures: All written comments must be submitted to Jackie Sheppard, APA Coordinator, Division of Facility Services, P. O. Box 29530, Raleigh, NC 27626-0530, telephone (919) 733-2342, up to and including October 15, 1993. Written comments submitted after the deadline will not be considered.

Editor's Note: This Rule was filed as a temporary amendment effective August 11, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS

SECTION .0300 - APPLICATION AND REVIEW PROCESS

.0305 FILING APPLICATIONS

(a) An application will not be reviewed by the agency until it is filed in accordance with this Rule.

(b) An original and a copy of the application shall be received by the agency no later than 5:00 p.m. on the last working day prior to 15 days before the first day of the scheduled review period. An application will not be included in a scheduled review if it is not received by the agency by this deadline. Each applicant shall transmit, with the application, a fee to be determined according to the following formula:

(1) With each application proposing no capital expenditure or the addition of a sixth bed to an existing or approved five bed intermediate care facility for the mentally retarded, the proponent shall transmit a fee in the amount of ~~four hundred dollars ($400.00)~~ two thousand dollars ($2,000).

(2) With each application, other than those referenced in (1) of this Rule, proposing a capital expenditure of up to, but not including, five hundred thousand dollars ($500,000), the proponent shall transmit a fee in the amount of ~~one thousand dollars ($1,000.00)~~ two thousand five hundred dollars ($2,500).

(3) With each application, other than those referenced in Subparagraph (b)(1) of this Rule, proposing a capital expenditure of five hundred thousand dollars ($500,000) or greater, the proponent shall transmit a fee in the amount of ~~one thousand dollars ($1,000.00)~~ two thousand five hundred dollars ($2,500), plus an additional fee equal to ~~.002~~ .0025 of the amount of the proposed capital expenditure in excess of five hundred thousand dollars ($500,000). The additional fee shall be rounded to the nearest whole dollar. In no case shall the total fee exceed ~~fifteen thousand dollars ($15,000)~~ seventeen thousand five hundred dollars ($17,500).

(c) After an application is filed, the agency shall determine whether it is complete for review. An application shall be complete unless:

(1) the requisite fee has not been received by the agency; or

(2) a signed original and copy of the application have not been submitted to the agency on the appropriate application form.

(d) If the agency determines the application is not complete for review, it shall mail notice of such determination to the applicant within five business days after the application is filed and shall specify what is necessary to complete the application. If the agency determines the application is

complete, it shall mail notice of such determination to the applicant prior to the beginning of the applicable review period.

(e) Information requested by the agency to complete the application must be received by the agency no later than 5:00 p.m. on the last working day before the first day of the scheduled review period. The review of an application will commence in the next applicable review period that commences after the application has been determined to be complete.

(f) If an application is withdrawn by the applicant before the first day of the applicable review period, the application fee, if paid, will be refunded to the applicant.

Statutory Authority G.S. 131E-177; 131E-182; S.L. 1983, C. 713.

* * * * * * * * * * * * * * * * * * *

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Services for the Blind/Commission for the Blind intends to amend rule cited as 10 NCAC 19C .0209.*

***The** proposed effective date of this action is December 1, 1993.*

***The** public hearing will be conducted at 10:00 a.m. on September 18, 1993 at the Division of Services for the Blind, Governor Morehead School Campus, Fisher Building Conference Room, 309 Ashe Avenue, Raleigh, NC 27606.*

***Reason** for Proposed Action: To establish procedures for awarding vacant facilities in the Business Enterprises Program.*

***Comment** Procedures: Any interested person may present his/her comments either in writing at the hearing or orally at the hearing. Any person may request information, permission to be heard, or copies of the proposed regulation, by writing or calling John DeLuca, Div. of Services for the Blind, 309 Ashe Ave., Raleigh, NC 27606, 733-9822.*

CHAPTER 19 - SERVICES FOR THE BLIND

SUBCHAPTER 19C - BUSINESS ENTERPRISES PROGRAM

SECTION .0200 - LICENSING AND PLACEMENT

.0209 FILLING OF VACANCIES

(a) A listing of available concession stand locations will be made available to all licensees. This listing will provide information about the location, and will also specify any particular work experience, education, or abilities which may be required at that location.

(b) Licensees who wish to be assigned to any of the locations listed may make application through the appropriate regional division office responsible for administering the concession stand program.

(c) Transfers and promotions, ~~and initial assignments~~ will be based on ~~ability and performance. Seniority~~

~~will be considered only to break ties between competitive applicants.~~ the following procedures:

(1) A notice of available facilities will be sent to each licensee on the last working day of the month. The notice will provide a short description of the vacancy and who to contact for more information.

(2) All applications must be post-marked by the 10th of the following month and mailed to the Chief of Business Enterprises at the State Office, 309 Ashe Avenue, Raleigh, N.C. 27606.

(3) Interviews will be conducted on the second Friday of the month which follows the application deadline.

(4) At least 10 working days prior to the interview, the Business Enterprises Counselor who works with the applicant will calculate the applicant's points for sanitation, seniority, Financial Analysis/Operating Standards [Subparagraphs (d), (1), (2), (3) of this Rule] and inform the applicant of his point total. The applicant will have five working days to review the point total and request any adjustments.

(5) After adding together the points from the sanitation, seniority, Financial Analysis/Operating Standards, Customer Relations and Oral Exam/Interview Sections [Subparagraphs (d), (1), (2), (3), (4), (5), (6), (7)) of this Rule] for each applicant, the applicant with the highest point total (if above 60 points) will be awarded the vacancy. If the applicant with the highest point total declines to accept the location, it will be offered to the next highest applicant (if above 60 points) and so on. In the case of an exact tie, the applicant with the most time in the Business Enterprises Program will be awarded the location.

(6) Applicants will be notified as soon as possible after their interview whether or not they have been awarded a location. (Notified by phone, followed up in writing).

(7) Upon being awarded a location, the applicant has 30 days to fill the vacancy, unless the Division and the applicant agree to another time frame. The location may not be filled for 15 working days following the award to allow time for administrative appeals to be filed. If an appeal is filed, the location will not be filled until the appeal is resolved. If there is only one applicant for a location, the 15 day waiting period does not apply.

(8) If an applicant is awarded a facility and does not accept the position, the applicant will not be able to apply for another position for one year. An applicant may withdraw his application up to two days prior to his interview and avoid the penalty. Applicants who apply for and are awarded more than one location will not be penalized as long as they accept one award.

(9) If an applicant is awarded a facility and has not had an Operator Agreement with the Agency in the last two years, the applicant may be required to repeat the necessary on-the-job-training. The Interview Committee may also recommend refresher course training as necessary to assure qualified management.

(10) Licensees/operators not selected have the right to file an administrative appeal as provided for in Subchapter 19C Section .0400. The fifteen-day limit to file an appeal will begin from the date informed by telephone of the results of the award.

(11) An applicant must have operated a Business Enterprises location for six months prior to the cut-off date for calculating financial performance according to standards to be considered an operator otherwise, he will be in licensee status.

(12) If an operator leaves the Business Enterprises Program and then applies for a location within 12 months of leaving, his financial performance according to standards for the 12 months prior to his leaving will be used to calculate points in the Financial Performance Section.

(13) Financial analyses of facilities will be done every two years. The analysis is on the facility not the operator; however, if an operator enters a facility and makes major changes, he may request a new analysis after at least four months in the new facility, or the Rehabilitation Supervisor may order a new analysis. If an applicant's financial analysis is more than two years old but less than two and one half years old and the applicant's performance is neither above 100% nor below 85% on either measure, the financial analysis will be considered current.

(14) An applicant who does not hold the appropriate license for the vacancy may be awarded the facility contingent upon successfully completing the necessary training. Applicants who hold the correct level of license but have not operated a facility at that level for at least two years may be required, at the discretion of the Interview Committee, to complete refresher training.

(15) An operator may not sit on the Interview Committee for a location for which he is applying. If

the Vice-Chairman and the Chairman of the Food Service Committee and the Chairman of the sub-committee on Transfer and Promotion are all restricted from sitting on the Interview Committee under this rule, those three must pick another Food Service Committee member to sit on the Interview Committee.

(16) The schedule for interviewing and awarding vacancies may be changed at certain times of the year to accommodate holidays, too many applications to be processed in one day, and the end-of-year close-out.

(17) Applicants will be reimbursed for their expenses to come to the interview at the state's established rates. The Business Enterprises Program will only reimburse for two interviews per year. After that, applicants must bear their own expenses for coming to interviews. Licensees who have active Rehabilitation cases should be reimbursed through the Rehabilitation program.

(d) Criteria To Be Used In Determining Points:

(1) Sanitation:

(A) Ten point maximum,

(B) One point for each sanitation grade point above ninety,

(C) Sanitation grade to be arrived at by averaging all sanitation scores received during last two years,

(D) Five points will be subtracted for any adjusted B grade in the last two years,

(E) The Business Enterprises Counselor will determine an adjusted grade by adding back in any points subtracted for deficiencies over which the operator has no control. Operator must inform Business Enterprises Counselor when an inspection has occurred so he can review the inspection and adjust the grade if needed. It is the operator's responsibility to make sure the Business Enterprises Counselor has copies of every sanitation inspection form from the relevant period so that they can calculate an accurate grade.

(2) Seniority:

(A) Five point maximum,

(B) Seniority points will be awarded as follows:

Years in Business Enterprises Program	- Points
0 to 4.99	- 0 points
5 to 9.99	- 1 point
10 to 14.99	- 2 points
15 to 19.99	- 3 points
20 to 24.99	- 4 points
25 and over	- 5 points

(C) Seniority is defined as the amount of time in full month increments an individual has been working in the Business Enterprises Program as a licensee or operator. A licensee/operator must work 51% of the working days in a month to receive credit for that month. The cutoff date for accruing time in the Program will be the end of the month when the vacancy is advertised.

(3) Performance According to Financial Analysis/Operating Standards:

(A) 50 Points Maximum,

(B) Applicants will receive 20 points for meeting their sales standard,

(C) Applicants will receive 20 points for meeting their gross profit percentage standard,

(D) Applicants will receive 5 points for meeting or exceeding 92.5% of their sales optimum

(E) Applicants will receive 5 points for meeting or exceeding 92.5% of their gross profit percentage optimum,

(F) Points according to Financial Analysis/Operating Standards in this Section will be calculated as follows:

(i) Use sales and gross profit figures for the twelve month period ending with the last day of the same month in which the vacancy is advertised. This is the cut-off date for financial performance calculations.

(ii) Take the facility's average monthly sales for the past twelve months, and calculate what percentage of the optimum it is. If it is over 85%, the applicant gets 20 points; if it is 92.5% or more, the applicant gets an additional 5 points.

(iii) Take the facility's gross profit percentage for the last twelve months and calculate what

percentage of the optimum it is. If it is over 85%, the applicant gets an additional 5 points. Example - The Level II facility in the XYZ Building has a sales standard of three thousand dollars ($3,000) per month with an optimum of three thousand five hundred and twenty-nine dollars ($3,529) per month. Its gross profit percentage standard is 40% with an optimum of 47%. The actual performance for the past twelve months of the facility is three thousand five hundred dollars ($3,500) per month in sales and a 42.3% gross profit percentage. Three thousand five hundred dollars ($3,500) in sales is 99.1% of the optimum sales and a 42.3% gross profit percentage is 90% of the optimum gross profit. The applicant would receive 20 points for meeting his sales standard 5 points for exceeding 92.5% of his sales optimum and 20 points for meeting his gross profit percentage standard. Out of a possible 50 points for financial performance, the applicant would get 45 points.

(4) Customer and Building Management Relations:

(A) Five points will be deducted for each substantiated customer complaint in the past two years, up to a maximum of 10 points.

(B) If the applicant has more than three substantiated customer complaints, he will not be considered for the award. A substantiated complaint is a written complaint which results in a letter to the operator with a copy to the operator's personnel file. The operator has the right to appeal the letter at the time the letter is placed in the operator's personnel file. No building management complaint can be used against an operator prior to June 1, 1993.

(5) Oral Exam/Interview:

(A) 30 points maximum.

(B) Interview will be face to face (no conference calls).

(C) Interviews will be conducted on the second Friday of the month which follows the month applications are due.

(D) All applicants must be interviewed.

(E) Oral Exam/Interview will be conducted by:

(i) the Chief of Business Enterprises,

(ii) the Area Rehabilitation Supervisor or B.E. Counselor for the area in which the vacancy occurs, and

(iii) the Vice-Chairman of the Food Service Committee or the Chairman in his absence, or in the absence of the Chairman, the Chairman of the Transfer and Promotion subcommittee.

(F) The Oral Exam part will consist of 10 questions drawn either from a pool of standard questions or developed by the interview committee prior to the interview. The oral exam questions will relate to any special needs of the vacant facility as well as to standard responsibilities and knowledge areas of Business Enterprises operators. Each member of the Interview Committee will evaluate the applicant's response to each question in the oral exam and assign either zero, one, one and a half or two points to the applicant's answer. There will be at least one question involving a calculation and a talking calculator will be provided, although applicants are recommended to bring their own. The oral exam will yield a possible 20 points.

(G) The interview part will consist of a variety of questions in a give and take format. Each member of the Interview Committee will evaluate the applicant's response to the interview questions and will award up to ten points at his/her discretion. The interview part must include the following elements: a review of the applicant's net profit percentage and statement of revenues and expenses for the past 12 months; a comparison of the applicant's performance to various statewide averages such as average gross and net profit percentages, salary costs, sales per hours open, sales per building population, etc.; two "philosophy of business" type questions designed to promote a general discussion and allow the Interview Committee the opportunity to evaluate the applicant's experience, maturity, expertise, and ability; a discussion of work experience outside of the Business Enterprises Program. Since points are awarded for seniority, time in the Business Enterprises Program will not be considered as a reason to award points; however, relevant work experience in the Business Enterprises Program may be discussed and taken into consideration. Applicants are encouraged to bring letters of recommendation, certificates, and other documents that would aid the Interview Committee in awarding its discretionary points.

(H) Each interviewer will award discretionary points individually and the total score of Oral Exam

and Interview points from each interviewer will be averaged and added to the applicant's points from the other Sections.

(6) Licensees and trainees:

(A) A licensee who has no previous experience in the North Carolina Business Enterprises Program will be assigned 35 points in the Financial Analysis/Operating Standards category. While a trainee is in training, he will be graded on sanitation at the Rehabilitation Center and at each on-the-job training site to compile a training sanitation grade for use in assigning points in the sanitation category.

(B) A licensee with previous Business Enterprises experience will be assigned 35 points in the Financial Analysis/Operating Standards category. Previous sanitation records will be considered, if available. If no previous sanitation records are available, the applicant has the option of taking the Food Service Sanitation Test offered by the Rehabilitation Center or through the Business Enterprises Program. If the licensee scores a 90% or above on the test, he will be given three points in the Sanitation Section.

(C) Applicants must have satisfactorily completed Level I training or have a Level I license to be interviewed.

(7) Maximum Point Scale:

	OPERATOR	LICENSEE
FAOS Performance	50	35
Interview	30	30
Sanitation	10	10
Seniority	05	0
Customer relations	up to minus 10 points	0
	95	75

An applicant must score at least 60 total points to be awarded a location.

Statutory Authority G.S. 111-27; 20 U.S.C., sec. 107 a et seq., as amended.

* * * * * * * * * * * * * * * * * *

***N**otice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to amend rule cited as 10 NCAC 26H .0202.*

***T**he proposed effective date of this action is December 1, 1993.*

***T**he public hearing will be conducted at 1:30 p.m. on October 4, 1993 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, NC 27603.*

***R**eason for Proposed Action: Rule necessary to change all primary affiliated teaching Hospitals for the University of North Carolina Medical Schools from a per diem rate of reimbursement to cost reimbursement.*

***C**omment Procedures: Written comments concerning this amendment must be submitted by October 4, 1993, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603 ATTN: Clarence Ervin, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.*

***E**ditor's Note: This Rule was filed as a temporary amendment effective August 6, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.*

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0200 - HOSPITAL INPATIENT REIMBURSEMENT PLAN

.0202 RATE SETTING METHODS

(a) An annual rate is determined for each hospital to be effective for dates of service beginning each July 1. Rates are derived from cost reports for a base-year period or from previous appeal decisions. The initial base-year is the cost-reporting period ending in 1981. Services provided prior to July 1, 1986 are reimbursed at rates not to exceed the rates effective July 1, 1985.

(b) The prospective rate is the sum of the operating rate component and the capital rate component. The capital rate component is the higher of the base-year capital per diem cost or the most recent capital rate as adjusted upon previous appeal. The base-year capital cost per diem is computed by dividing total capital costs allocated to inpatient services by total inpatient days. The operating rate component is determined by inflating the Medicaid base-year operating cost per diem to the rate year. The base-year operating cost per diem is computed by subtracting the capital cost per diem from the total base-year Medicaid cost per diem. Base-year Medicaid costs include inpatient routine, special care, and ancillary services, malpractice insurance, interns' and residents' services, and other covered inpatient services.

(c) Inflation factors for the operating rate components are based on the National Hospital Market Basket Index and the most recent actual and projected cost data available from the North Carolina Office of State Budget and Management.

(d) The prospective rate for a new hospital is set at the lower of:

(1) The all-hospital mean rate; or

(2) Seventy-five percent of the hospital's projected average gross inpatient revenue per day during the first year of operations.

This provision applies to a hospital if a cost report covering at least twelve months of normal operations has not been filed. This rate is the base-year rate until a desk-reviewed cost report covering at least twelve months of normal operations is available.

(e) Out-of-state hospital services are reimbursed according to the rates established by the Medicaid Agency of the State in which the hospital is located. If a usable rate cannot be obtained, services are reimbursed at 75 percent of billed charges or a negotiated rate not to exceed reasonable cost.

(f) The initial base-year for psychiatric hospitals is the cost reporting period ending in 1989, or 1990 if a full year cost report is available as of April 1, 1991. The total base-year per diem cost for a hospital is limited to the median per diem cost in the base-year of all psychiatric hospitals. The limit does not apply to or reduce any amortization of start-up costs of an individual hospital. State-operated hospitals are not included in the calculation of the median per diem cost.

(g) To assure compliance with the separate upper payment limit for State-operated facilities, the hospitals operated by the Department of Human Resources and ~~the University of North Carolina hospitals~~ all the primary affiliated teaching hospitals for the University of North Carolina Medical Schools, will be reimbursed their reasonable costs in accordance with the provisions of the Medicare Provider Reimbursement Manual.

(h) This plan intends to encourage the use of lower-cost hospitals for routine illnesses. Hospitals with rates at or below the all-hospital mean will be reimbursed at the full prospective rate without day limits. Hospitals with rates higher than the mean rate of all hospitals will be reimbursed at the full prospective rate up to an annual days limit. Days in excess of the limit will be reimbursed at the mean rate of hospitals below the all-hospital mean. This reimbursement limitation will be eliminated for claims paid in April, 1991 and thereafter if and when:

(1) the Health Care Financing Administration, U.S. Department of Health and Human Services, approves amendments submitted to HCFA by the Director of the Division of Medical Assistance on or about March 14, 1991 as #MA 91-10 and #MA 91-11, wherein the Director proposes amendment of the State Plan to eliminate the "Annual Days Limit" to the Plan, and

(2) the Director of the Division of Medical Assistance determines that sufficient funds are available pursuant to Rule .0206(b)(3) of this Section or otherwise for this purpose.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Private Protective Services Board intends to amend rules cited as 12 NCAC 7D .0203, .0301 - .0302 and .0401 - .0402.

The proposed effective date of this action is December 1, 1993.

The public hearing will be conducted at 10:00 a.m. on September 16, 1993 at the State Bureau of Investigation, Conference Room, 3320 Old Garner Road, Raleigh, N.C.

Reason for Proposed Action:
***12 NCAC 7D .0203** - Amendment allows the Board to reinstate an expired license upon the submission of certain information.*
***12 NCAC 7D .0301** - Amendment will allow the Board to consider security guard and patrol experience gained within the last ten years when determining an applicant's experience.*
***12 NCAC 7D .0302** - Amendment will allow the Board to consider guard dog service experience gained within the last ten years when determining an applicant's experience.*
***12 NCAC 7D .0401** - Amendment will allow the Board to consider private investigative experience gained within the last 10 years when determining an applicant's experience.*
***12 NCAC 7D .0402** - Amendment will allow the Board to consider counterintelligence experience gained within the last ten years when determining an applicant's experience.*

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments until October 1, 1993. Written comments may be delivered to or mailed to: W. A. Hoggard, Private Protective Services Board, 3320 Old Garner Rd., P.O. Box 29500, Raleigh, N.C. 27626.

CHAPTER 7 - PRIVATE PROTECTIVE SERVICES

SUBCHAPTER 7D - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0200 - LICENSES: TRAINEE PERMITS

.0203 RENEWAL OR RE-ISSUE OF LICENSES AND TRAINEE PERMITS

(a) Each applicant for a license or trainee permit renewal shall submit an original and one copy of a renewal form. This form should be submitted to the administrator not less than 30 days prior to expiration of the applicant's current license or trainee permit and shall be accompanied by:

(1) a recent head and shoulders color photograph of the applicant of acceptable quality for identification, one inch by one inch in size;

(2) statements of the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 12 months; and

(3) the applicant's renewal fee; and

(4) proof of liability insurance as set out in G.S. 74C-10(e).

(b) If a licensee in good standing with the Board has maintained a license at least two years and then allows the license to expire, the license may be re-issued if application is made within ten years of the expiration date and the following documentation is submitted to the Board:

(1) an Application For Reinstatement of an Expired License;

(2) one set of classifiable fingerprints on an applicant fingerprint card;

(3) one recent head and shoulders photograph(s) of the applicant of acceptable quality for identification, one inch by one inch in size;

(4) statements of the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 60 months;

(5) the applicant's non-refundable application fee;

(6) proof of liability insurance as set out in G.S. 74C-10(e); and

(7) a separate check or money order made payable to the State Bureau of Investigations to cover criminal record checks performed by the State Bureau of Investigations.

Statutory Authority G.S. 74C-5; 74C-9.

SECTION .0300 - SECURITY GUARD AND PATROL: GUARD DOG SERVICE

.0301 EXPERIENCE REQUIREMENTS/ SECURITY GUARD AND PATROL LICENSE

(a) In addition to the requirements of 12 NCAC 7D .0200, applicants for a security guard and patrol license shall:

(1) establish to the Board's satisfaction three years experience within the past ~~five~~ 10 years as a manager, supervisor, or administrator with a contract security company or a proprietary security organization performing guard and patrol functions; or

(2) establish to the Board's satisfaction three years experience within the past ~~five~~ 10 years as a manager, supervisor, or administrator in security with any federal, U.S. Armed Forces, state, county, or municipal law enforcement agency performing guard and patrol functions.

(b) The Board may give up to two years credit toward the experience requirements set forth in Paragraph (a)(1) and (2) of this Rule as follows:

(1) one year of credit for a two year Associate Degree in Security, Criminal Justice or the equivalent conferred by an accredited technical institute, college or university;

(2) one year of credit for a Bachelor's Degree in Business or Economics or the equivalent conferred by an accredited college or university; or

(3) two years of credit for a Bachelor's Degree, Master's Degree or Doctorate in Security or Criminal Justice or the equivalent conferred by an accredited college or university.

(c) Persons licensed under Chapter 74D of the General Statutes of North Carolina, may be issued a limited guard and patrol license exclusively for providing armed alarm responders. Applicants for such a limited license shall not be required to meet the experience requirements of 12 NCAC 7D .0302. Any experience gained under this limited license shall not be counted as experience for a full guard and patrol license. All armed responders shall be registered with the Board.

Statutory Authority G.S. 74C-5; 74C-8; 74C-13.

.0302 EXPERIENCE REQUIREMENTS FOR GUARD DOG SERVICE LICENSE

In addition to the requirements of 12 NCAC 7D .0200, applicants for a guard dog service license shall:

(1) establish to the Board's satisfaction two years experience within the past ~~five~~ 10 years as a manager, supervisor, administrator, or dog handler with a contract security company or proprietary security organization performing guard dog functions; or

(2) establish to the Board's satisfaction two years experience within the past ~~five~~ 10 years as a manager, supervisor, administrator, or dog handler with any federal, U.S. Armed Forces, state, county, or municipal agency performing guard dog functions.

Statutory Authority G.S. 74C-5; 74C-8.

SECTION .0400 - PRIVATE INVESTIGATOR: COUNTERINTELLIGENCE

.0401 EXPERIENCE REQUIREMENTS FOR A PRIVATE INVESTIGATOR LICENSE

(a) In addition to the requirements of G.S. 74C-8 and 12 NCAC 7D .0200, applicants for a private investigator license shall:

(1) establish to the Board's satisfaction three years of acceptable experience within the past ~~five~~ 10 years while satisfactorily conducting investigations as defined in G.S. 74C-3(a)(8) with a contract security company or with a private person, firm, association or corporation; or

(2) establish to the Board's satisfaction three years of acceptable experience within the past ~~five~~ 10 years while satisfactorily conducting investigations as defined in G.S. 74C-3(a)(8) while serving in an investigative capacity as defined in 12 NCAC 7D .0104(9) with any Federal, U.S. Armed Forces, state, county, municipal law enforcement agency or other governmental agency.

(b) The Board may give up to two years credit toward the experience requirements set forth in Paragraph (a) of this Rule as follows:

(1) one year of credit for a two year Asso-

ciate Degree in Security, Criminal Justice or the equivalent conferred by an accredited technical institute, college or university;

(2) one year of credit for a Bachelor's Degree in Business or Economics or the equivalent conferred by an accredited college or university; or

(3) two years of credit for a Bachelor's Degree, Master's Degree or Doctorate in Security or Criminal Justice or the equivalent conferred by an accredited college or university.

(c) Time spent teaching police science subjects at a post-secondary educational institution (such as a community college, college or university) shall toll the time for the minimum year requirements in 12 NCAC 7D .0401(a). For the purposes of this Section, "toll" means that the experience gained by an applicant immediately prior to beginning teaching shall not be discredited. "Toll" shall not mean that credit is given for teaching police science subjects.

Statutory Authority G.S. 74C-5(2).

.0402 EXPERIENCE REQUIREMENTS FOR A COUNTERINTELLIGENCE LICENSE

In addition to the requirements of 12 NCAC 7D .0200, applicants for a counterintelligence license shall:

(1) establish to the Board's satisfaction three years experience within the past ~~five~~ 10 years in counterintelligence; or

(2) have successfully completed a course in counterintelligence given by a school specializing in counterintelligence which has been approved by the Board and which consists of not less than 40 hours of actual classroom instruction.

Statutory Authority G.S. 74C-5.

TITLE 13 - DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Labor intends to amend rule cited as 13 NCAC 7F .0101.

The proposed effective date of this action is December 1, 1993.

The public hearing will be conducted at 10:00 a.m. on September 21, 1993 at the Labor Building, Room 249, 4 West Edenton Street, Raleigh, NC 27601.

Reason for Proposed Action: There is a need for a new level of training within 29 CFR 1910.120 - Hazardous Waste Operations and Emergency Response, for protection of the public from threat of environmental harm and property or bodily injury.

Comment Procedures: Persons wanting to present oral testimony at the hearing should provide a written summary of the proposed testimony to the Department three business days prior to the hearing date. Written comments will be accepted until October 1, 1993. Direct all correspondence to Jill F. Cramer, NCDOL/OSHA, 413 N. Salisbury Street, Raleigh, NC 27603-5942.

Editor's Note: This Rule was filed as a temporary amendment effective August 16, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 7 - OFFICE OF OCCUPATIONAL SAFETY AND HEALTH

SUBCHAPTER 7F - STANDARDS

SECTION .0100 - GENERAL INDUSTRY STANDARDS

.0101 GENERAL INDUSTRY

(a) The provisions for the Occupational Safety and Health Standards for General Industry, Title 29 of the Code of Federal Regulations Part 1910, are adopted by reference~~.~~ except that within Subpart H - Hazardous Materials, 29 CFR 1910.120, Hazardous waste operations and emergency response, 29 CFR 1910.120(q)(6) is amended by adding a new level of training:

"(vi) *First responder operations plus level.* This level of training is for public sector firefighters responding to hazardous substances emergencies involving only gasoline, diesel fuel, or liquid propane gas (LPG) where the

situation requires more than the defensive actions allowed first responders at operations level (i.e. plugging/patching a fuel tank or shutting LPG valves at roadside emergencies). First responders at the operations plus level shall have received at least training equal to first responder operations level and in addition shall receive training or have had sufficient experience to objectively demonstrate competency in the following areas and the employer shall so certify:

(A) Know how to select and use proper specialized personal protective equipment provided to the first responder at operations plus level;

(B) Understand basic hazardous materials terms as they pertain to hydrocarbon fuels;

(C) Understand hazard and risk assessment techniques that pertain to gasoline, diesel fuel, and LPG;

(D) Be able to perform control, containment, and/or confinement operations for gasoline, diesel fuel, and LPG within the capabilities of the available resources and personal protective equipment; and

(E) Understand and know how to implement decontamination procedures for hydrocarbon fuels."

(b) The parts of the Code of Federal Regulations adopted by reference in this Subchapter shall not automatically include any subsequent amendments thereto.

(c) Copies of the applicable Code of Federal Regulations sections referred to in this Subchapter are available to the public. Please refer to 13 NCAC 7A .0302 for the costs involved and from whom copies may be obtained.

Statutory Authority G.S. 95-131; 150B-21.6.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the EHNR - DEM/Air Quality intends to adopt rules cited as 15A NCAC 2D .0805 - .0806, .1109 and 2Q .0101 - .0111, .0201 - .0207, .0301 - .0311, .0401 - .0418, .0501 - .0524 and .0601 - .0606; amend 2D .0101, .0501, .0503, .0524 - .0525, .0530 - .0533, .0601, .0801 - .0804; and repeal 2H .0601 - .0607 and .0609.*

***The** proposed effective date of this action is February 1, 1994.*

***The** public hearing will be conducted:*

September 21, 1993
7:00 p.m
Auditorium
Catawba Valley Community College
2550 Highway 70 South East
Hickory, North Carolina

September 27, 1993
7:00 p.m.
Groundfloor Hearing Room
Archdale Building
512 North Salisbury Street
Raleigh, North Carolina

September 29, 1993
7:00 p.m.
Criminal District Court Room
Second Floor
130 South Queen Street
Kinston, North Carolina

***Reason** for Proposed Action: To recodify current permit rules, to adopt permit rules to meet the requirements of Title IV and Title V of the federal Clean Air Act, to adopt new permit fee schedules, and to revise transportation facility (complex source) rules.*

***Comment** Procedures: All persons interested in these matters are invited to attend the public hearing. Any person desiring to comment for more than three minutes is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer*

may limit oral presentation lengths to five minutes if many people want to speak. The Environmental Management Commission (EMC) seeks comments on establishing de minimis levels for reporting emissions of various air pollutants. Based on comments received, the EMC may include in the final rules de minimis reporting levels. Also the EMC seeks comments on which air permit applications or parts of applications need to be sealed by a professional engineer. The North Carolina Board of Professional Engineers and Land Surveyors has determined that portions of the air quality permit application process for certain facilities involve the practice of engineering and, therefore, must be sealed by a registered professional engineer (PE). Based on comments received, the EMC may include in the final rules a requirement that certain permit applications or parts of permit applications be sealed by a PE. The hearing records will remain open until October 29, 1993, to receive additional written statements.

Comments should be sent to and additional information concerning the hearings or the proposals may be obtained by contacting:

Mr. Thomas C. Allen
Division of Environmental Management
P.O. Box 29535
Raleigh, North Carolina 27626-0535
(919) 733-1489

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0100 - DEFINITIONS AND REFERENCES

.0101 DEFINITIONS

The definition of any word or phrase used in ~~Regulations~~ Rules of this Subchapter is the same as given in Article 21, Chapter 143 of the General Statutes of North Carolina, as amended. The following words and phrases, which are not defined in the article, have the following meaning:

(1) "Act" means "The North Carolina Water and Air Resources Act."

(2) "Air pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radiative substance or matter which is emitted into or otherwise enters the ambient air ~~particulate matter, dust, fumes, gas, mist, smoke, vapor, or any other air contaminant. Water vapor is not considered an air pollutant~~.

(3) "Ambient air" means that portion of the atmosphere outside of buildings and other enclosed structures, stacks or ducts, and which surrounds human, animal or plant life, or property.

(4) "Approved" means approved by the Director of the Division of Environmental Management.

(5) "Capture system" means the equipment (including hoods, ducts, fans, etc.) used to contain, capture, or transport a pollutant to a control device.

(6) "CFR" means "Code of Federal Regulations."

(7) "Combustible material" means any substance which, when ignited, will burn in air.

(8) "Construction" means any physical change, including fabrication, erection, installation, change in method of operation, or modification, of a facility, source, or air pollution control equipment.

(9) "Control device" means equipment (fume incinerator, adsorber, absorber, scrubber, filtermedia, cyclone, electrostatic precipitator, or the like) used to destroy or remove air pollutant(s) prior to discharge to the ambient air.

(10) "Day" means a 24-hour period beginning at midnight.

(11) "Director" means the Director of the Division of Environmental Management unless otherwise specified.

(12) "Dustfall" means particulate matter which settles out of the air and is expressed in units of grams per square meter per 30-day period.

(13) "Emission" means the release or discharge, whether directly or indirectly, of any air pollutant into the ambient air from any source.

(14) "Facility" means all of the pollutant emitting activities that are located on one or more contiguous or adjacent properties ~~and that are under the control of the same person or persons~~ under common control.

(15) "FR" means Federal Register.

(16) "Fugitive emission" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(17) "Fuel burning equipment" means equip-

ment whose primary purpose is the production of energy or power from the combustion of any fuel. The equipment is generally used for, but not limited to, heating water, generating or circulating steam, heating air as in warm air furnace, or furnishing process heat by transferring energy by fluids or through process vessel walls.

(18) "Garbage" means any animal and vegetable waste resulting from the handling, preparation, cooking and serving of food.

(19) "Incinerator" means a device designed to burn solid, liquid, or gaseous waste material.

(20) "Opacity" means that property of a substance tending to obscure vision and is measured in terms of percent obscuration.

(21) "Open burning" means any fire whose products of combustion are emitted directly into the outdoor atmosphere without passing through a stack or chimney, approved incinerator, or other similar device.

(22) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.

(23) "Particulate matter" means any material except uncombined water that exists in a finely divided form as a liquid or solid at standard conditions.

(24) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by methods specified in this Subchapter.

(25) "Permitted" means any source subject to a permit under this Subchapter or ~~Section 15 NCAC 2H .0600~~ Subchapter 15A NCAC 2Q.

(26) "Person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, or any other legal entity, or its legal representative, agent or assigns.

(27) "PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by methods specified in this Subchapter.

(28) "PM10 emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by methods specified in this Subchapter.

(29) "Refuse" means any garbage, rubbish, or trade waste.

(30) "Rubbish" means solid or liquid wastes from residences, commercial establishments, or institutions.

(31) "Rural area" means an area which is primarily devoted to, but not necessarily limited to, the following uses: agriculture, recreation, wildlife management, state park, or any area of natural cover.

(32) "Salvage operation" means any business, trade, or industry engaged in whole or in part in salvaging or reclaiming any product or material, including, but not limited to, metal, chemicals, motor vehicles, shipping containers, or drums.

(33) "Smoke" means small gas-borne particles resulting from incomplete combustion, consisting predominantly of carbon, ash, and other burned or unburned residue of combustible materials that form a visible plume.

(34) "Smoke density measuring device" means:

(a) Ringelmann Chart which is the chart published by the U.S. Bureau of Mines and described in their information Circular 8333 and on which are illustrated graduated shades of grey to black for use in estimating the light obscuring capacity of smoke;

(b) the pocket size Ringelmann Chart and other adaptations commonly used by trained smoke inspectors;

(c) other equivalent standards approved by the commission.

(35) "Source" means any stationary article, machine, process equipment, or other contrivance, or combination thereof, or any tank-truck, trailer or railroad tank car from which air pollutants emanate or are emitted, either directly or indirectly.

(36) "Sulfur oxides" means sulfur dioxide, sulfur trioxide, their acids and the salts of their acids. The concentration of sulfur dioxide is measured by the methods specified in this Subchapter.

(37) "Total suspended particulate" means any finely divided solid or liquid material, except water in uncombined form, that is or has been airborne as measured by methods specified in this Subchapter.

(38) "Trade wastes" means all solid, liquid, or gaseous waste materials or rubbish resulting from combustion, salvage operations, building operations, or the operation of any business, trade, or industry including, but not limited to, plastic products, paper, wood, glass, metal, paint, grease, oil and other petroleum products, chemicals, and ashes.

(39) "ug" means micrograms.

Statutory Authority G.S. 143-215.3(a)(1); 143-213.

SECTION .0500 - EMISSION CONTROL STANDARDS

.0501 COMPLIANCE WITH EMISSION CONTROL STANDARDS

(a) Purpose and Scope. The purpose of this ~~Regulation~~ Rule is to assure orderly compliance with emission control standards found in this Section. This ~~Regulation~~ Rule shall apply to all air pollution sources, both combustion and non-combustion.

(b) In determining compliance with emission control standards, means shall be provided by the owner to allow periodic sampling and measuring of emission rates, including necessary ports, scaffolding and power to operate sampling equipment; and upon the request of the Division of Environmental Management, data on rates of emissions shall be supplied by the owner.

(c) Testing to determine compliance shall be in accordance with the following procedures, except as may be otherwise required in ~~Regulations~~ Rules .0524, .0525, and .0604 of this Subchapter.

(1) Method 1 of Appendix A of 40 CFR Part 60 shall be used to select a suitable site and the appropriate number of test points for the following situations:

(A) particulate testing,

(B) velocity and/or volume flow rate measurements;

(C) testing for acid mist or other pollutants which occur in liquid droplet form,

(D) any sampling for which velocity and/or volume flow rate measurements are necessary for computing final test results, and

(E) any sampling which involves a sampling method which specifies isokinetic sampling. (Isokinetic sampling is sampling in which the velocity of the gas at the point of entry into the sampling nozzle is equal to the velocity adjacent to the nozzle.)

Method 1 shall be applied as written with the following clarifications: Testing installations with multiple breechings can be accomplished by testing the discharge stack(s) to which the multiple breechings exhaust. If the multiple breechings are individually tested, then Method 1 shall be applied to each breeching individually. If test ports in a duct are located less than two diameters downstream from any disturbance (fan, elbow, change in diameter, or any other physical feature that may disturb the gas flow) or one-half diameter upstream from any disturbance, the acceptability of the test location shall be subject to the approval of the ~~director~~ Director, or his designee.

(2) Method 2 of Appendix A of 40 CFR Part 60 shall be applied as written and used concurrently with any test method in which velocity and/or volume flow rate measurements are required.

(3) Sampling procedures for determining compliance with particulate emission control standards shall be in accordance with Method 5 of Appendix A of 40 CFR Part 60. Method 17 of Appendix A of 40 CFR Part 60 may be used instead of Method 5 provided that the stack gas temperature does not exceed 320° F. The minimum time per test point for particulate testing shall be two minutes and the minimum time per test run shall be one hour. The sample gas drawn during each test run shall be at least 30 cubic feet. A number of sources are known to emit organic material (oil, pitch, plasticizers, etc.) which exist as finely divided liquid droplets at ambient conditions. These materials cannot be satisfactorily collected by means of the above Method 5. In these cases the commission will reserve the option to require the use of Method 5 as proposed on August 17, 1971, in the Federal Register, Volume 36, Number 159.

(4) The procedures for determining compliance with sulfur dioxide emission control standards for

fuel burning sources may be either by determining sulfur content with fuel analysis or by stack sampling. Combustion sources choosing to demonstrate compliance through stack sampling shall follow procedures described in Method 6 of Appendix A of 40 CFR Part 60. If a source chooses to demonstrate compliance by analysis of sulfur in fuel, sampling, preparation, and analysis of fuels shall be in accordance with the following American Society of Testing and Materials (ASTM) methods:

(A) coal:

(i) sampling--ASTM Method D 2234-82;

(ii) preparation--ASTM Method D 2013-72;

(iii) gross calorific value (BTU)--ASTM Method D 2015-85;

(iv) moisture content--ASTM Method D 3173-85;

(v) sulfur content--ASTM Method D 3177-84 or ASTM Method D 4239-85;

(B) oil:

(i) sampling--A sample shall be collected at the pipeline inlet to the fuel burning unit after sufficient fuel has been drained from the line to remove all fuel that may have been standing in the line;

(ii) heat of combustion (BTU)--ASTM Method D 240-85;

(iii) sulfur content--ASTM Method D 129-64 (reapproved 1978).

The sulfur content and BTU content of the fuel shall be reported on a dry basis. When the test methods described in Parts (A) or (B) of this Subparagraph are used to demonstrate that the ambient air quality standards for sulfur dioxide are being protected, the sulfur content shall be determined at least once per year from a composite of at least three or 24 samples taken at equal time intervals from the fuel being burned over a three-hour or 24-hour period, respectively, whichever is the time period for which the ambient standard is most likely to be exceeded; this requirement shall not apply to sources that are only using fuel analysis in place of continuous monitoring to meet the requirements of Section .0600 of this Subchapter.

(5) Sulfuric acid manufacturing plants and spodumene ore roasting plants shall demonstrate compliance with ~~Regulations~~ Rules .0517 and .0527, respectively, of this Section by using Method 8 of Appendix A of 40 CFR Part 60.

(6) All other industrial processes emitting sulfur dioxide shall demonstrate compliance by sampling procedures described in Method 6 of Appendix A of 40 CFR Part 60.

(7) Sampling procedures to demonstrate compliance with emission standards for nitrogen oxides shall be in accordance with the procedures set forth in Method 7 of Appendix A of 40 CFR Part 60.

(8) Method 9 of Appendix A of 40 CFR 60 shall be used when opacity is determined by visual observation.

(9) Notwithstanding the stated applicability to new source performance standards or primary aluminum plants, the procedures to be used to determine fluoride emissions are:

(A) for sampling emissions from stacks, Method 13A or 13B of Appendix A of 40 CFR Part 60,

(B) for sampling emissions from roof monitors not employing stacks or pollutant collection systems, Method 14 of Appendix A of 40 CFR Part 60, and

(C) for sampling emissions from roof monitors not employing stacks but equipped with pollutant collection systems, the procedure under 40 CFR 60.8(b), except that the Director of the Division of Environmental Management shall be substituted for the administrator.

(10) Emissions of total reduced sulfur shall be measured by the test procedure described in Method 16 of Appendix A of 40 CFR Part 60 or Method 16A of Appendix A of 40 CFR Part 60.

(11) Emissions of mercury shall be measured by the test procedure described in Method 101 or 102 of Appendix B of 40 CFR Part 61.

(12) Each test (excluding fuel samples) shall consist of three repetitions or runs of the applicable test method. For the purpose of determining compliance with an applicable emission standard the average of results of all repetitions shall apply.

(13) In conjunction with performing certain test methods prescribed in this ~~Regulation~~ Rule, the determination of the fraction of carbon dioxide, oxygen, carbon monoxide and nitrogen in the gas being sampled is necessary to determine the molecular weight of the gas being sampled. Collecting a sample for this purpose shall be done in accordance with Method 3 of Appendix A of 40 CFR Part 60:

(A) The grab sample technique may also be used with instruments such as Bacharach Fyrite (trade name) with the following restrictions:

(i) Instruments such as the Bacharach Fyrite (trade name) may only be used for the measurement of carbon dioxide.

(ii) Repeated samples shall be taken during the emission test run to account for variations in the carbon dioxide concentration. No less than four samples shall be taken during a one-hour test run, but as many as necessary shall be taken to produce a reliable average.

(iii) The total concentration of gases other than carbon dioxide, oxygen and nitrogen shall be less than one percent.

(B) For fuel burning sources, concentrations of oxygen and nitrogen may be calculated from combustion relations for various fuels.

(14) For those processes for which the allowable emission rate is determined by the production rate, provisions shall be made for controlling and measuring the production rate. The source shall be responsible for ensuring, within the limits of practicality, that the equipment or process being tested is operated at or near its maximum normal production rate or at a lesser rate if specified by the ~~director~~ Director or his delegate. The individual conducting the emission test shall be responsible for including with his test results, data which accurately represent the production rate during the test.

(15) Emission rates for wood or fuel burning sources which are expressed in units of pounds per million BTU shall be determined by the "Oxygen Based F Factor Procedure" described in 40 CFR Part 60, Appendix A, Method 19, Section 5. Other procedures described in Method 19 may be used subject to the approval of the Director, Division of Environmental Management. To provide data of sufficient accuracy to use with the F-factor methods, an integrated (bag) sample shall be taken for the duration of each test run. In the case of simultaneous testing of multiple ducts, there shall be a separate bag for each sampling train. The bag sample shall be analyzed with an Orsat analyzer in accordance with Method 3 of Appendix A of 40 CFR Part 60. (The number of analyses and the tolerance between analyses are specified in Method 3.) The specifications indicated in Method 3 for the construction and operation of the bag sampling apparatus shall be followed.

(16) Particulate testing on steam generators that utilize soot blowing as a routine means for cleaning heat transfer surfaces shall be conducted so that the contribution of the soot blowing is represented as follows:

(A) If the soot blowing periods are expected to represent less than 50 percent of the total particulate emissions, one of the test runs shall include a soot blowing cycle.

(B) If the soot blowing periods are expected to represent more than 50 percent of the total particulate emissions then two of the test runs shall each include a soot blowing cycle.

Under no circumstances shall all three test runs include soot blowing. The average emission rate of particulate matter is calculated by the equation:

$$E_{AVG} = E_S \frac{S(A + B)}{R} + E_N \left(\frac{R - S - BS}{AR} \right)$$

E_{AVG} equals the average emission rate in pounds per million Btu for daily operating time. E_S equals the average emission rate in pounds per million Btu of sample(s) containing soot blowing. E_N equals the average emission rate in pounds per million Btu of sample(s) with no soot blowing. A equals hours of soot blowing during sample(s). B equals hours without soot blowing during sample(s) containing sootblowing. R equals average hours of operation per 24 hours. S equals average hours of soot blowing per 24 hours. If large changes in boiler load or stack flow rate occur during soot blowing, other methods of prorating the emission rate may be considered more appropriate; for these tests the Director or his designee may approve an alternate method of prorating.

(17) Emissions of volatile organic compounds shall be measured by the appropriate test procedure in Section .0900 of this Subchapter.

(18) Upon prior approval by the Director or his delegate, test procedures different from those described in this ~~Regulation~~ Rule may be used. Furthermore, the Director or his delegate has

the option to prescribe alternate test procedures on an individual basis when he considers that the action is necessary to secure reliable test data. In the case of sources for which no test method is named, the Director or his delegate has the authority to prescribe or approve methods on an individual basis.

(d) All existing sources of emission shall comply with applicable regulations and standards at the earliest possible date. All new sources shall be in compliance prior to beginning operations.

(e) In addition to any control or manner of operation necessary to meet emission standards in this Section, any source of air pollution shall be operated with such control or in such manner that the source shall not cause the ambient air quality standards of Section .0400 of this Subchapter to be exceeded at any point beyond the premises on which the source is located. When controls more stringent than named in the applicable emission standards in this Section are required to prevent violation of the ambient air quality standards or are required to create an offset, the permit shall contain a condition requiring these controls.

(f) The Bubble Concept. A facility with multiple emission sources or multiple facilities within the same area may choose to meet the total emission limitation for a given pollutant through a different mix of controls than that required by the regulations in this Section or Section .0900 of this Subchapter.

(1) In order for this mix of alternative controls to be permitted the ~~director~~ Director shall determine that the following conditions are met:

(A) Sources to which ~~Regulations~~ Rules .0524, .0525, .0530, and .0531 of this Section, the federal New Source Performance Standards (NSPS), the federal National Emission Standards for Hazardous Air Pollutants (NESHAPS), regulations established pursuant to Section 111 (d) of the federal Clean Air Act, or state or federal Prevention of Significant Deterioration (PSD) requirements apply, will have emissions no larger than if there were not an alternative mix of controls;

(B) The facility (or facilities) is located in an attainment area or an unclassified area or in an area that has been demonstrated to be attainment by the statutory deadlines (with reasonable further progress toward attainment) for those pollutants being considered;

(C) All of the emission sources affected by the alternative mix are in compliance with applicable regulations or are in compliance with established compliance agreements; and

(D) The review of an application for the proposed mix of alternative controls and the enforcement of any resulting permit will not require excessive expenditures on the part of the State.

(2) The owner(s) or operator(s) of the facility (facilities) shall demonstrate to the satisfaction of the ~~director~~ Director that the alternative mix of controls is equivalent in total allowed emissions, reliability, enforceability, and environmental impact to the aggregate of the otherwise applicable individual emission standards; and

(A) that the alternative mix approach does not interfere with attainment and maintenance of ambient air quality standards and does not interfere with the PSD program; this demonstration shall include modeled calculations of the amount, if any, of PSD increment consumed or created;

(B) that the alternative mix approach conforms with reasonable further progress requirements in any nonattainment area;

(C) that the emissions under the alternative mix approach are in fact quantifiable, and trades among them are even;

(D) that the pollutants controlled under the alternative mix approach are of the same criteria pollutant categories, except that emissions of some criteria pollutants used in alternative emission control strategies are subject to the limitations as defined in 44 FR 71784 (December 11, 1979), Subdivision D.1.c.ii.

The demonstrations of equivalence shall be performed with at least the same level of detail as The North Carolina State Implementation plan for Air Quality demonstration of attainment for the area in question. Moreover, if the facility involves another facility in the alternative strategy, it shall complete a modeling demonstration to ensure that air quality is protected. Demonstrations of equivalency shall also take into account differences in the level of reliability of the control measures or other uncertainties.

(3) The emission rate limitations or control techniques of each source within the facility (facilities) subjected to the alternative mix of controls shall be specified in the facility's (facilities') permits(s).

(4) Compliance schedules and enforcement actions shall not be affected because an application for

an alternative mix of controls is being prepared or is being reviewed.

(5) The ~~director~~ Director may waive or reduce requirements in this Paragraph up to the extent allowed by the Emissions Trading Policy Statement published in the Federal Register of April 7, 1982, pages 15076-15086, provided that the analysis required by ~~15 NCAC 2H .0603 (g)(1)~~ Subparagraph (g)(1) of this Rule shall support any waiver or reduction of requirements.

(g) In a permit application for an alternative mix of controls under 15A NCAC 2D .0501(f), the owner or operator of the facility shall demonstrate to the satisfaction of the Director that the proposal is equivalent to the existing requirements of the SIP in total allowed emissions, enforceability, reliability, and environmental impact.

(1) With the exception stated in Subparagraph (2) of this Paragraph, a public hearing shall be held before any permit containing alternative emission limitations is issued. The public hearing shall be preceded by a 30-day period of public notice during which the agency's analysis and draft permit shall be available for public inspection and comment in the appropriate regional office. If and when a permit containing these conditions is issued, it will become a part of the SIP as an appendix available for inspection at the department's regional offices. Until the U.S. Environmental Protection Agency (EPA) approves the SIP revision embodying the permit containing an alternative mix of controls, the facility shall continue to meet the otherwise applicable existing SIP requirements. The revision will be approved by EPA on the basis of the revision's consistency with EPA's "Policy for Alternative Emission Reduction Options Within State Implementation Plans" as promulgated in the Federal Register of December 11, 1989, pages 71780-71788, and subsequent rulings.

(2) The permit applicant(s) may choose to provide a written acknowledgment that the emission rate limitations or control techniques allowed under an alternative mix of controls involving only volatile organic compounds are fully enforceable by EPA as a part of the SIP and may be enforced pursuant to Section 304(a) of the federal Clean Air Act. The acknowledgment shall also bind the source owner's successors. If the acknowledgment is provided to the Director, the Director will promptly transmit to EPA a copy of the permit application. Before the Director issues the permit, there shall be a 30-day period of public notice during which the agency's analysis and draft permit shall be available for public inspection and comment in the appropriate regional office. If and when such permit is issued, the Director will promptly transmit a copy to EPA. The owner or operator of a source located in a nonattainment area for ozone as designated by the Environmental Protection Agency may not initiate the use of this option after November 30, 1989; he shall follow the procedures set out in Subparagraph (1) of this Paragraph.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0503 PARTICULATES FROM FUEL BURNING INDIRECT HEAT EXCHANGERS

(a) With the exceptions in Rule .0536 of this Section, emissions of particulate matter from the combustion of a fuel that are discharged from any stack or chimney into the atmosphere shall not exceed:

Maximum Heat Input In Millon BTU/Hour	Allowable Emission Limit For Particulate Matter In Lb/Million BTU
Up to and Including 10	0.60
100	0.33
1,000	0.18
10,000 and Greater	0.10

For a heat input between any two consecutive heat inputs stated in the preceding table, the allowable emissions of particulate matter shall be calculated by the equation E=1.090 times Q to the -0.2594 power. E=allowable emission limit for particulate matter in lb/million BTU. Q=maximum heat input in million BTU/hour.

(b) This Rule applies to installations in which fuel is burned for the purpose of producing heat or power by indirect heat transfer. Fuels include those such as coal, coke, lignite, peat, natural gas, and fuel oils,

but exclude wood and refuse not burned as a fuel. When any refuse, products, or by-products of a manufacturing process are burned as a fuel rather than refuse, or in conjunction with any fuel, this allowable emission limit shall apply.

(c) For the purpose of this Rule, the maximum heat input shall be the total heat content of all fuels which are burned in a fuel burning indirect heat exchanger, of which the combustion products are emitted through a stack or stacks. The sum of maximum heat input of all fuel burning indirect heat exchangers at a plant site which are in operation, under construction, or permitted pursuant to ~~Section 15A NCAC 2H .0600~~ Subchapter 15A NCAC 2Q, shall be considered as the total heat input for the purpose of determining the allowable emission limit for particulate matter for each fuel burning indirect heat exchanger. Fuel burning indirect heat exchangers constructed or permitted after February 1, 1983, shall not change the allowable emission limit of any fuel burning indirect heat exchanger whose allowable emission limit has previously been set. The removal of a fuel burning indirect heat exchanger shall not change the allowable emission limit of any fuel burning indirect heat exchanger whose allowable emission limit has previously been established. However, for any fuel burning indirect heat exchanger constructed after, or in conjunction with, the removal of another fuel burning indirect heat exchanger at the plant site, the maximum heat input of the removed fuel burning indirect heat exchanger shall no longer be considered in the determination of the allowable emission limit of any fuel burning indirect heat exchanger constructed after or in conjunction with the removal. For the purposes of this Paragraph, refuse not burned as a fuel and wood shall not be considered a fuel. For residential facilities or institutions (such as military and educational) whose primary fuel burning capacity is for comfort heat, only those fuel burning indirect heat exchangers located in the same power plant or building or otherwise physically interconnected (such as common flues, steam, or power distribution line) shall be used to determine the total heat input.

(d) The emission limit for fuel burning equipment that burns both wood and other fuels in combination, or for wood and other fuel burning equipment that is operated such that emissions are measured on a combined basis, shall be calculated by the equation Ec = [(EW) (Qw) + (Eo) (Qo)] /Qt.

(1) Ec = the emission limit for combination or combined emission source(s) in lb/million BTU.
(2) Ew = plant site emission limit for wood only as determined by ~~Regulation~~ Rule .0504 of this Section in lb/million BTU.
(3) Eo = the plant site emission limit for other fuels only as determined by Paragraphs (a), (b) and (c) of this ~~Regulation~~ Rule in lb/million BTU.
(4) Qw = the actual wood heat input to the combination or combined emission source(s) in BTU/hr.
(5) Qo = the actual other fuels heat input to the combination or combined emission source(s) in BTU/hr.
(6) Qt = Qw + Qo and is the actual total heat input to combination or combined emission source(s) in BTU/hr.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0524 NEW SOURCE PERFORMANCE STANDARDS

(a) Sources of the following types when subject to new source performance standards promulgated in 40 CFR Part 60 shall comply with the emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedure provisions, and any other provisions, as required therein, rather than with any otherwise-applicable Rule in this Section which would be in conflict therewith. New sources of volatile organic compounds that are located in Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, or Wake Counties, Dutchville Township in Granville County, or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek, and back to the Yadkin River shall comply with the following requirements, as well as with any applicable requirements in Section .0900 of this Subchapter:

(1) fossil fuel-fired steam generators (40 CFR 60.1 to 60.49, Subpart D);
(2) incinerators (40 CFR 60.1 to 60.39 and 60.50 to 60.59, Subpart (E);
(3) portland cement plants (40 CFR 60.1 to 60.39 and 60.60 to 60.69, Subpart F);
(4) nitric acid plants (40 CFR 60.1 to 60.39 and 60.70 to 60.79, Subpart G);
(5) sulfuric acid plants (40 C.F.R. 60.1 to 60.39 and 60.80 to 60.89, Subpart H);
(6) asphalt concrete plants (40 CFR 60.1 to 60.39 and 60.90 to 60.99, Subpart I);

(7) petroleum refineries (40 CFR 60.1 to 60.39 and 60.100 to 60.109, Subpart J);
(8) storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978 (40 CFR 60.1 to 60.39 and 60.110 to 60.119, Subpart K);
(9) secondary lead smelters (40 CFR 60.1 to 60.39 and 60.120 to 60.129, Subpart L);
(10) secondary brass and bronze ingot production plants(40 CFR 60.1 to 60.39 and 60.130 to 60.139, Subpart M);
(11) iron and steel plants (40 CFR 60.1 to 60.39 and 60.140 to 60.149, Subpart N);
(12) sewage treatment plants (40 CFR 60.1 to 60.39 and 60.150 to 60.159, Subpart O);
(13) phosphate fertilizer industry: wet process phosphoric acid plants (40 CFR 60.1 to 60.39 and 60.200 to 60.209, Subpart T);
(14) phosphate fertilizer industry: superphosphoric acid plants (40 CFR 60.1 to 60.39 and 60.210 to 60.219, Subpart U);
(15) phosphate fertilizer industry: diammonium phosphate plants (40 CFR 60.1 to 60.39 and 60.220 to 60.229, Subpart V);
(16) phosphate fertilizer industry: triple superphosphate plants (40 CFR 60.1 to 60.39 and 60.230 to 60.239, Subpart W);
(17) phosphate fertilizer industry: granular triple superphosphate storage facilities (40 CFR 60.1 to 60.39 and 60.240 to 60.249, Subpart X);
(18) steel industry: electric arc furnaces (40 CFR 60.1 to 60.39 and 60.270 to 60.279, Subpart AA);
(19) coal preparation plants (40 CFR 60.1 to 60.39 and 60.250 to 60.259, Subpart Y);
(20) primary copper smelters (40 CFR 60.1 to 60.39 and 60.160 to 60.169, Subpart P);
(21) primary zinc smelters (40 CFR 60.1 to 60.39 and 60.170 to 60.179, Subpart Q);
(22) primary lead smelters (40 CFR 60.1 to 60.39 and 60.180 to 60.189, Subpart R);
(23) primary aluminum reduction plants (40 CFR 60.1 to 60.39 and 60.190 to 60.199, Subpart S);
(24) ferroalloy production facilities (40 CFR 60.1 to 60.39 and 60.260 to 60.269, Subpart Z);
(25) kraft pulp mills (40 CFR 60.1 to 60.39 and 60.280 to 60.289, Subpart BB);
(26) grain elevators (40 CFR 60.1 to 60.39 and 60.300 to 60.309, Subpart DD);
(27) lime manufacturing plants (40 CFR 60.1 to 60.39 and 60.340 to 60.349, Subpart HH);
(28) stationary gas turbines (40 CFR 60.1 to 60.39 and 60.330 to 60.339, Subpart GG);
(29) electric utility steam generating units (40 CFR 60.1 to 60.39 and 40 CFR 60.40a to 60.49a, Subpart Da);
(30) storage vessels for petroleum liquids, for which construction, reconstruction, or modification commenced after May 18, 1978 and prior to July 23, 1984 (40 CFR 60.1 to 60.39 and 40 CFR 60.110a to 60.119a, Subpart Ka);
(31) glass manufacturing plants (40 CFR 60.1 to 60.39 and 40 CFR 60.290 to 60.299, Subpart CC);
(32) lead-acid battery manufacturing (40 CFR 60.1 to 60.39 and 40 CFR 60.370 to 60.379, Subpart KK);
(33) automobile and light duty truck surface coating operations (40 CFR 60.1 to 60.39 and 40 CFR 60.390 to 60.399, Subpart MM);
(34) phosphate rock plants (40 CFR 60.1 to 60.39 and 40 CFR 60.400 to 60.409, Subpart NN);
(35) ammonium sulfate manufacturing (40 CFR 60.1 to 60.39 and 40 CFR 60.420 to 60.429, Subpart PP);
(36) surface coating of metal furniture (40 CFR 60.1 to 60.39 and CFR 60.310 to 60.319, Subpart EE);
(37) graphic arts industry: publication rotogravure printing (40 CFR 60.1 to 60.39 and 40 CFR 60.430 to 60.439, Subpart QQ);
(38) industrial surface coating: large appliances (40 CFR 60.1 to 60.39 and 40 CFR 60.450 to 60.459, Subpart SS);
(39) metal coil surface coating (40 CFR 60.1 to 60.39 and 40 CFR 60.460 to 60.469, Subpart TT);

(40) beverage can surface coating industry (40 CFR 60.1 to 60.39 and 40 CFR 60.490 to 60.499, Subpart WW);

(41) asphalt processing and asphalt roofing manufacture (40 CFR 60.1 to 60.39 and 40 CFR 60.470 to 60.479, Subpart UU);

(42) bulk gasoline terminals (40 CFR 60.1 to 60.39 and 40 CFR 60.500 to 60.509, Subpart XX);

(43) metallic mineral processing plants (40 CFR 60.1 to 60.39 and 40 CFR 60.380 to 60.389, Subpart LL);

(44) pressure sensitive tape and label surface coating operations (40 CFR 60.1 to 60.39 and 40 CFR 60.440 to 60.449, Subpart RR);

(45) equipment leaks of VOC in the synthetic organic chemicals manufacturing industry (40 CFR 60.1 to 60.39 and 40 CFR 60.480 to 60.489, Subpart VV);

(46) equipment leaks of VOC in petroleum refineries (40 CFR 60.1 to 60.39 and 40 CFR 60.590 to 60.599, Subpart GGG);

(47) synthetic fiber production facilities (40 CFR 60.1 to 60.39 and 40 CFR 60.600 to 60.609, Subpart HHH);

(48) flexible vinyl and urethane coating and printing (40 CFR 60.1 to 60.39 and 40 CFR 60.580 to 60.589, Subpart FFF);

(49) petroleum dry cleaners (40 CFR 60.1 to 60.39 and 60.620 to 60.629, Subpart JJJ);

(50) onshore natural gas processing plants: equipment leaks of volatile organic compounds (40 CFR 60.1 to 60.39 and 60.630 to 60.639, Subpart KKK);

(51) wool fiberglass insulation manufacturing (40 CFR 60.1 to 60.39 and 60.680 to 60.689, Subpart PPP);

(52) nonmetallic mineral processing plants (40 CFR 60.1 to 60.39 and 60.670 to 60.679, Subpart OOO);

(53) steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 17, 1983 (40 CFR 60.1 to 60.39 and 60.270a to 60.279a, Subpart AAa);

(54) onshore natural gas processing: SO(2) emissions (40 CFR 60.1 to 60.39 and 60.640 to 60.649, Subpart LLL);

(55) basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983: (40 CFR 60.1 to 60.39 and 60.140a to 60.149a, Subpart Na);

(56) industrial-commercial-institutionalsteam generating units (40 CFR 60.1 to 60.39 and 60.40b to 60.49b, Subpart Db);

(57) volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984 (40 CFR 60.1 to 60.39 and 40 CFR 60.110b to 60.119b, Subpart Kb);

(58) rubber tire manufacturing industry (40 CFR 60.1 to 60.39 and 40 CFR 60.540 to 60.549, Subpart BBB);

(59) industrial surface coating: surface coating of plastic parts for business machines (40 CFR 60.1 to 60.39 and 40 CFR 60.720 to 60.729, Subpart TTT);

(60) magnetic tape coating facilities (40 CFR 60.1 to 60.39 and 40 CFR 60.710 to 60.719, Subpart SSS);

(61) volatile organic compound emissions from petroleum refinery wastewater systems (40 CFR 60.1 to 60.34 and 40 CFR 60.690 to 60.699, Subpart QQQ);

(62) volatile organic compound emissions from the synthetic organic chemical manufacturing industry air oxidation unit processes (40 CFR 60.1 to 60.34 and 40 CFR 60.610 to 60.618, Subpart III);

(63) volatile organic compound emissions from synthetic organic chemical manufacturing industry distillation operations (40 CFR 60.1 to 60.34 and 40 CFR 60.660 to 60.668, Subpart NNN);

(64) polymeric coating of supporting substrates facilities (40 CFR 60.1 to 60.34 and 40 CFR 60.740 to 60.748, Subpart VVV);

(65) smallindustrial-commercial-institutional steam generating units (40 CFR 60.1 to 60.34 and 40 CFR 60.40c to 60.48c, Subpart Dc);

(66) municipal waste combustors (40 CFR 60.1 to 60.34 and 40 CFR 60.50a to 60.59a, Subpart Ea);

(67) volatile organic emissions from the polymer manufacturing industry (40 CFR 60.1 to 60.34 and 40 CFR 60.560 to 60.566 except 40 CFR 60.562-2(c),

Subpart DDD)~~.~~;

(68) calciners and dryers in mineral industries(40 CFR 60.1 to 60.34 and 40 CFR 60.730 to 60. 737, Subpart UUU).

(b) All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this Rule shall be submitted to the Director of the Division of Environmental Management rather than to the Environmental Protection Agency.

(c) In the application of this Rule, definitions contained in 40 CFR Part 60 shall apply rather than those of Section .0100 of this Subchapter when conflict exists.

(d) ~~Paragraphs (a) and (b) of Rule .0601 of Subchapter 2H of this Chapter~~ 15A NCAC 2Q .0102(b) and .0302(c) and (d) are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in ~~Paragraph (e) of Rule .0601 of Subchapter 2H of this Chapter~~ 15A NCAC 2Q .0300 or .0500.

(e) The Code of Federal Regulations cited in this Rule are incorporated by reference and shall automatically include any later amendments thereto except for categories of sources not referenced in Paragraph (a) of this Rule. Categories of sources not referenced in Paragraph (a) of this Rule for which EPA has promulgated new source performance standards in 40 CFR Part 60, if and when incorporated into this Rule, shall be incorporated using rule-making procedures.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 150B-21.6.

.0525 NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

(a) Sources emitting pollutants of the following types when subject to national emission standards for hazardous air pollutants promulgated in 40 CFR Part 61 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedural provisions, and any other provisions, as required therein, rather than with any otherwise-applicable Rule in this Section which would be in conflict therewith. New sources of volatile organic compounds that are located in Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, or Wake Counties, Dutchville Township in Granville County, or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek, and back to the Yadkin River shall comply with the following requirements, as well as with any applicable requirements in Section .0900 of this Subchapter:

(1) asbestos (40 CFR 61.01 to 61.19 and 61.140 to 61.159, Subpart M, with the exception named in 40 CFR 61.157);

(2) beryllium (40 CFR 61.01 to 61.19 and 61.30 to 61.39, Subpart C);

(3) beryllium from rocket motor firing (40 CFR 61.01 to 61.19 and 61.40 to 61.49, Subpart D);

(4) mercury (40 CFR 61.01 to 61.19 and 61.50 to 61.59, Subpart E);

(5) vinyl chloride (40 CFR 61.01 to 61.19 and 61.60 to 61.71, Subpart F);

(6) equipment leaks (fugitive emission sources) of benzene (40 CFR 61.01 to 61.19 and 61.110 to 61.119, Subpart J);

(7) equipment leaks (fugitive emission sources) (of volatile hazardous air pollutants) (40 CFR 61.01 to 61.19 and 61.240 to 61.249, Subpart V);

(8) inorganic arsenic emissions from glass manufacturing plants (40 CFR 61.01 to 61.19 and 61.160 to 61.169, Subpart N);

(9) inorganic arsenic emissions from primary copper smelters (40 CFR 61.01 to 61.19 and 61.170 to 61.179, Subpart O);

(10) inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities (40 CFR 61.01 to 61.19 and 61.180 to 61.186, Subpart P);

(11) benzene emissions from benzene transfer operations (40 CFR 61.01 to 61.19 and 61.300 to 61.306, Subpart BB);

(12) benzene waste operations (40 CFR 61.01 to 61.19 and 61.340 to 61.358, Subpart FF);

(13) benzene emissions from coke by-product recovery plants (40 CFR 61.01 to 61.19 and 61.130 to 61.139, Subpart L);

(14) benzene emissions from benzene storage vessels (40 CFR 61.01 to 61.19 and 61.270 to 61.277 except 61.273, Subpart Y).

(b) All requests, reports, applications,

submittals, and other communications to the administrator required under Paragraph (a) of this Rule shall be submitted to the Director of the Division of Environmental Management rather than to the Environmental Protection Agency; except that all such reports, applications, submittals, and other communications to the administrator required by 40 CFR 61.145 shall be submitted to the Director, Division of Epidemiology.

(c) In the application of this Rule, definitions contained in 40 CFR Part 61 shall apply rather than those of Section .0100 of this Subchapter when conflict exists.

(d) ~~Paragraphs (a) and (b) of Rule 15A NCAC 2H .0601~~ 15A NCAC 2Q .0102(b) and .0302(c) and (d) are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in ~~Paragraph (c) of Rule 15A NCAC 2H .0601~~ 15A NCAC 2Q .0300 or .0500.

(e) The Code of Federal Regulations cited in this Rule are incorporated by reference and shall automatically include any later amendments thereto except for categories of sources not referenced in Paragraph (a) of this Rule. Categories of sources not referenced in Paragraph (a) of this Rule for which EPA has promulgated national emission standards for hazardous air pollutants in 40 CFR Part 61, if and when incorporated into this Rule, shall be incorporated using rule-making procedures.

Statutory Authority G.S. 143-215.3(a) (1); 143-215.107 (a) (5); 150B-21.6.

.0530 PREVENTION OF SIGNIFICANT DETERIORATION

(a) The purpose of the Rule is to implement a program for the prevention of significant deterioration of air quality as required by 40 CFR 51.166 as amended October 17, 1988.

(b) For the purposes of this Rule the definitions contained in 40 CFR 51.166(b) and 40 CFR 51.301 shall apply. The reasonable period specified in 40 CFR 51.166(b)(3)(ii) shall be seven years. The limitation specified in 40 CFR 51.166(b)(15)(ii) shall not apply.

(c) All areas of the State shall be classified as Class II except that the following areas are Class I:

(1) Great Smoky Mountains National Park;
(2) Joyce Kilmer Slickrock National Wilderness Area;
(3) Linville Gorge National Wilderness Area;
(4) Shining Rock National Wilderness Area;
(5) Swanquarter National Wilderness Area.

(d) Redesignations of areas to Class I or II may be submitted as state proposals to the Administrator of the Environmental Protection Agency (EPA), if the requirements of 40 CFR 51.166(g)(2) are met. Areas may be proposed to be redesignated as Class III, if the requirements of 40 CFR 51.166(g)(3) are met. Redesignations may not, however, be proposed which would violate the restrictions of 40 CFR 51.166(e). Lands within the boundaries of Indian Reservations may be redesignated only by appropriate Indian Governing Body.

(e) In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the values set forth in 40 CFR 51.166(c). However, concentration of the pollutant shall not exceed standards set forth in 40 CFR 51.166(d).

(f) Concentrations attributable to the conditions described in 40 CFR 51.166(f)(1) shall be excluded in determining compliance with a maximum allowable increase. However, the exclusions referred to in 40 CFR 51.166(f)(1)(i) or (ii) shall be limited to five years as described in 40 CFR 51.166(f)(2).

(g) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166(i) and by extension in 40 CFR 51.166(j) through (o). The transition provisions allowed by 40 CFR 52.21 (i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this Rule. The minimum requirements described in the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this Rule, except as otherwise provided in this Rule. Wherever the language of the portions of 40 CFR 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this Rule. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide that the State plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted under this Rule. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR 51.166(n)(2).

(h) ~~Paragraphs (a) and (b) of 15A NCAC 2H~~

~~.0601~~ 15A NCAC 2Q .0102(b) and (c) and .0302(b) and (c) are not applicable to any source to which this Rule applies. The owner or operator of the sources ~~Sources~~ to which this Rule applies shall apply for and receive a permit as required in ~~Paragraph (e) of 15A NCAC 2H .0601~~ 15A NCAC 2Q .0300 or .0500.

(i) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(j) Volatile organic compounds exempted from coverage in Subparagraph (c) (5) of Rule .0531 of this Section shall also be exempted when calculating source applicability and control requirements under this Rule.

(k) The degree of emission limitation required for control of any air pollutant under this Rule shall not be affected in any manner by:

(1) that amount of a stack height, not in existence before December 31, 1970, that exceeds good engineering practice; or

(2) any other dispersion technique not implemented before then.

(l) A substitution or modification of a model as provided for in 40 CFR 51.166 (l) shall be subject to public comment procedures in accordance with the requirements of 40 CFR 51.166(q).

(m) Permits may be issued on the basis of innovative control technology as set forth in 40 CFR 51.166(s)(1) if the requirements of 40 CFR 51.166(s)(2) have been met, subject to the condition of 40 CFR 51.166(s)(3), and with the allowance set forth in 40 CFR 51.166(s)(4).

(n) If a source to which this Rule applies impacts an area designated Class I by requirements of 40 CFR 51.166(e), notice to EPA will be provided as set forth in 40 CFR 51.166(p)(1). If the Federal Land Manager presents a demonstration described in 40 CFR 51.166(p)(3) during the public comment period or public hearing to the Director and if the Director concurs with this demonstration, the permit application shall be denied. Permits may be issued on the basis that the requirements for variances as set forth in 40 CFR 51.166(p)(4), (p)(5) and (p)(7), or (p)(6) and (p)(7) have been satisfied.

(o) A permit application subject to this Rule shall be processed in accordance with the procedures and requirements of 40 CFR 51.166(q). Within 30 days of receipt of the application, applicants will be notified if the application is complete as to initial information submitted. Notwithstanding this determination, the 90-day period provided for the Commission to act by G.S. 143-215.108(b) shall be considered to begin at the end of the period allowed for public comment, at the end of any public hearing held on the application, or when the applicant supplies information requested by the Director in answer to comments received during the comment period or at any public hearing, whichever is later. The Director shall notify the Administrator of EPA of any application considered approved by expiration of the 90 days; this notification shall be made within 10 working days of the date of expiration. If no permit action has been taken when 70 days of the 90-day period have expired, the Commission shall relinquish its prevention of significant deterioration (PSD) authority to EPA for that permit. The Commission shall notify by letter the EPA Regional Administrator and the applicant when 70 days have expired. EPA will then have responsibility for satisfying unmet PSD requirements, including permit issuance with appropriate conditions. The permit applicant must secure from the Commission, a permit revised (if necessary) to contain conditions at least as stringent as those in the EPA permit, before beginning construction. Commencement of construction before full PSD approval is obtained constitutes a violation of this Rule.

(p) Approval of an application with regard to the requirements of this Rule shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of other rules of this Chapter and any other requirements under local, state, or federal law.

(q) When a source or modification subject to this Rule may affect the visibility of a Class I area named in Paragraph (c) of this Rule, the following procedures shall apply:

(1) The Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days prior to the publication of notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application

including an analysis provided by the source of the potential impact of the proposed source on visibility.

(2) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the application, an explanation of his decision or notice as to where the explanation can be obtained.

(3) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

(r) Revisions of the North Carolina State Implementation Plan for Air Quality shall comply with the requirements contained in 40 CFR 51.166(a)(2).

(s) The version of the Code of Federal Regulations incorporated in this Rule is that as of January 1, 1989, and does not include any subsequent amendments or additions to the referenced material.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.108(b); 150B-21.6.

.0531 SOURCES IN NONATTAINMENT AREAS

(a) This Rule applies to certain new major stationary sources and major modifications which are located in an area which is designated by the U.S. Environmental Protection Agency (EPA) to be a nonattainment area as of May 1, 1982.

(b) For the purpose of this Rule the definitions contained in 40 CFR 51.165(a)(1) and 40 CFR 51.301 shall apply. The reasonable period specified in 40 CFR 51.165(a)(1)(vi)(C)(1) shall be seven years.

(c) This Rule is not applicable to:

(1) complex sources of air pollution that are regulated only under Section .0800 of this Subchapter and not under any other rule in this Subchapter;

(2) emission of pollutants at the new major stationary source or major modification located in the nonattainment area which are pollutants other than the pollutant or pollutants for which the area is nonattainment. (A major stationary source or major modification that is major for volatile organic compounds is also major for ozone.);

(3) emission of pollutants for which the source or modification is not major;

(4) a new source or modification which qualifies for exemption under the provision of 40 CFR 51.165(a)(4); and

(5) emission of the following volatile organic compounds:

(A) methane,

(B) ethane,

(C) trichlorofluoromethane (chlorofluorocarbon 11),

(D) dichlorodifluoromethane (chlorofluorocarbon 12),

(E) chlorodifluoromethane (chlorofluorocarbon 22),

(F) trifluoromethane (fluorocarbon 23),

(G) trichlorotrifluoroethane (chlorofluorocarbon 113),

(H) dichlorotetrafluoroethane (chlorofluorocarbon 114),

(I) chloropentafluoroethane (chlorofluorocarbon 115),

(J) 1,1,1-trichloroethane (methyl chloroform),

(K) dichloromethane (methylene chloride),

(L) dichlorotrifluoroethane (hydrochlorofluorocarbon 123),

(M) tetrafluoroethane (hydrofluorocarbon 134a),

(N) dichlorofluoroethane (hydrochlorofluorocarbon 141b), and

(O) chlorodifluoroethane (hydrochlorofluorocarbon 142b).

(d) ~~Paragraphs (a) and (b) of 15A NCAC 2H .0601~~ 15A NCAC 2Q .0102(b) and (c) and .0302(b) and (c) are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in ~~Paragraph (c) of 15A NCAC 2H .0601~~ 15A NCAC 2Q .0300 or .0500.

(e) To issue a permit to a source to which this Rule applies, the ~~director~~ Director shall determine that the source will meet the following requirements:

(1) The source will emit the nonattainment pollutant at a rate no more than the lowest achievable emission rate.

(2) The owner or operator of the proposed new or modified source has demonstrated that all major stationary sources in the State which are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance which is federally enforceable or contained in a court decree, with all applicable emission limitations and standards of this Subchapter which EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air Quality.

(3) The source will obtain sufficient emission reductions of the nonattainment pollutant from other sources in the nonattainment area so that the emissions from the new source will be less than the emissions reductions. The baseline for this emission offset shall be the actual emissions of the source from which offset credit is obtained. Emission reductions must not include any reductions resulting from compliance (or scheduled compliance) with applicable rules in effect prior to the application. The difference between the emissions from the new source and the emission reductions must be sufficient to represent reasonable further progress toward attaining the Ambient Air Quality Standards. The emissions reduction credits must also conform to the provisions of 40 CFR 51.165(a)(3)(ii)(A) through (G).

(4) The North Carolina State Implementation Plan for Air Quality is being carried out for the nonattainment area in which the proposed source is located.

(f) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(g) To issue a permit to a source of a nonattainment pollutant for which the state has demonstrated to the satisfaction of the Administrator of EPA that attainment is not possible in the area within the period prior to December 31, 1982, despite the implementation of all reasonably available measures, the Director shall determine, in addition to the other requirements of this Rule, that an analysis (produced by the permit applicant) of alternative sites, sizes, production processes, and environmental control techniques for source demonstrates that the benefits of the source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(h) Approval of an application with regard to the requirements of this Rule shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of other rules of this Chapter and any other requirements under local, state, or federal law.

(i) When a source or modification subject to this Rule may affect the visibility of a Class 1 area named in Paragraph (c) of Rule .0530 of this Section, the following procedures shall be followed:

(1) The owner or operator of the source shall provide an analysis of the impairment to visibility that would occur as a result of the source or modification and general commercial, industrial and other growth associated with the source or modification.

(2) The Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days prior to the publication of the notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility.

(3) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to

demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the application, an explanation of his decision or notice as to where the explanation can be obtained.

(4) The Director shall only issue permits to those sources whose emissions will be consistent with making reasonable progress towards the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I areas when the impairment results from man-made air pollution. In making the decision to issue a permit, the Director shall consider the cost of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.

(5) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

The requirements of this Paragraph shall not apply to nonprofit health or nonprofit educational institutions.

(j) The version of the Code of Federal Regulations incorporated in this Rule is that as of January 1, 1989, and does not include any subsequent amendments or additions to the referenced material.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b); 150B-21.6.

.0532 SOURCES CONTRIBUTING TO AN AMBIENT VIOLATION

(a) This Rule applies to certain new major stationary sources and major modifications which are located in an area which is designated by the U.S. Environmental Protection Agency (EPA) to be an attainment or unclassifiable area as of May 1, 1983, and which would contribute to a violation of a national ambient air quality standard but which would not cause a new violation.

(b) For the purpose of this Rule the definitions contained in Section II.A. of Appendix S of 40 CFR Part 51 shall apply.

(c) The Rule is not applicable to:

(1) complex sources of air pollution that are regulated only under Section .0800 of this Subchapter and not under any other rule of this Subchapter;

(2) emission of pollutants for which the area in which the new or modified source is located is designated as nonattainment;

(3) emission of pollutants for which the source or modification is not major;

(4) emission of pollutants other than sulfur dioxide, total suspended particulates, nitrogen oxides, and carbon monoxide;

(5) a new or modified source whose impact will increase not more than:

(A) 1.0 ug/m^3 of SO_2 on an annual basis,

(B) 5 ug/m^3 of SO_2 on a 24-hour basis,

(C) 25 ug/m^3 of SO_2 on a 3-hour basis,

(D) 1.0 ug/m^3 of total suspended particulates on an annual basis,

(E) 5 ug/m^3 of total suspended particulates on a 24-hour basis,

(F) 1.0 ug/m^3 of NO_2 on an annual basis,

(G) 0.5 mg/m^3 of carbon monoxide on an 8-hour basis,

(H) 2 mg/m^3 of carbon dioxide on a one-hour basis,

(I) 1.0 ug/m^3 of PM10 on an annual basis, or

(J) 5 ug/m^3 of PM10 on a 24-hour basis,

at any locality that does not meet a national ambient air quality standard;

(6) sources which are not major unless secondary emissions are included in calculating the potential to emit;

(7) sources which are exempted by the provision in Section II.F. of Appendix S of 40 CFR Part 51;

(8) temporary emission sources which will be relocated within two years; and

(9) emissions resulting from the construction phase of the source.

(d) ~~Paragraphs (a) and (b) of 15A NCAC 2H .0601~~ 15A NCAC 2Q .0102(b) and (c) and .0302(b) and (c) are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in ~~Paragraph (c) of 15A NCAC 2H .0601~~ 15A NCAC 2Q .0300 or .0500.

(e) To issue a permit to a new or modified source to which this Rule applies, the Director shall determine that the source will meet the following conditions:

(1) The sources will emit the nonattainment pollutant at a rate no more than the lowest achievable emission rate.

(2) The owner or operator of the proposed new or modified source has demonstrated that all major stationary sources in the State which are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance which is federally enforceable or contained in a court decree, with all applicable emission limitations and standards of this Subchapter which EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air Quality.

(3) The source will satisfy one of the following conditions:

(A) The source will comply with Part (e)(3) of Rule .0531 of this Section when the source is evaluated as if it were in the nonattainment area; or

(B) The source will have an air quality offset, i.e., the applicant will have caused an air quality improvement in the locality where the national ambient air quality standard is not met by causing reductions in impacts of other sources greater than any additional impact caused by the source for which the application is being made. The emissions reductions creating the air quality offset shall be placed as a condition in the permit for the source reducing emissions. The requirements of this Part may be partially waived if the source is a resource recovery facility burning municipal solid waste, the source must switch fuels due to lack of adequate fuel supplies, or the source is required to be modified as a result of EPA regulations and no exemption from such regulations is available and if:

(i) the permit applicant demonstrates that it made its best efforts to obtain sufficient air quality offsets to comply with this Part;

(ii) the applicant has secured all available air quality offsets; and

(iii) the applicant will continue to seek the necessary air quality offsets and apply them when they become available.

(f) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(g) The version of the Code of Federal Regulations incorporated in this Rule is that as of January 1, 1989, and does not include any subsequent amendments or additions to the referenced material.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b); 150B-21.6.

.0533 STACK HEIGHT

(a) For the purpose of this ~~Regulation~~ Rule, the following definitions apply:

(1) "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

(2) "A stack in existence" means that the owner or operator had:

(A) begun, or caused to begin, a continuous program of physical on-site construction of the stack; or

(B) enter into binding agreements or contractual obligations, which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

(3) "Dispersion technique"

(A) "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

(i) using that portion of a stack which exceeds good engineering practice stack height,

(ii) varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant, or

(iii) increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or

combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

(B) "Dispersion technique" does not include:

(i) the reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) the using of smoke management in agricultural or silvicultural prescribed burning programs;

(iii) the merging of exhaust gas streams where:

(I) The facility owner or operator demonstrates that the source was originally designed and constructed with such merged gas streams;

(II) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(III) Before July 8, 1985, such merging was part of a change in operation at the source that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the ~~director~~ Director shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the ~~director~~ Director shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

(iv) Episodic restrictions on residential woodburning and open burning or;

(v) Techniques under Subpart (A)(iii) of this Subparagraph which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

(4) "Good engineering practice (GEP) stack height" means the greater of:

(A) 65 meters measured from the ground-level elevation at the base of the stack;

(B) 2.5 times the height of nearby structure(s) measured from the ground-level elevation at the base of the stack for stacks in existence on January 12, 1979 and for which the owner or operator had obtained all applicable permit or approvals required under ~~15 NCAC 2H .0600~~ 15A NCAC 2Q and 40 CFR Parts 51 and 52, provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

(C) for stacks not covered under Part (B) of this Subparagraph, the height of nearby structure(s) measured from the ground-level elevation at the base of the stack plus 1.5 times the lesser dimension (height or projected width) of nearby structure(s) provided that the ~~director~~ Director may require the use of a field study or fluid model to verify GEP stack height for the source; or

(D) the height demonstrated by a fluid model or a field study approved by the ~~director~~ Director, which ensures

that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

(5) "Nearby" means, for a specific structure or terrain feature:

(A) under Parts (4)(B) and (C) of this Paragraph, that distance up to five times the lesser of the height or the width dimension of a structure but not greater than one-half mile. The height of the structure is measured from the ground-level elevation at the base of the stack.

(B) under Part (4)(D) of this Paragraph, not greater than one-half mile, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height [H_t] of the feature , not to exceed two miles if such feature achieves a height [h_t] one-half mile from the stack that is at least 40 percent of the GEP stack height determined by Part (4)(C) of this Paragraph or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(6) "Excessive concentrations" means, for the purpose of determining good engineering practice stack height under Part (4)(D) of this Paragraph:

(A) for sources seeking credit for stack height exceeding that established under Part (4)(B) or (C) of this Paragraph, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to ~~Regulation~~ Rule .0530 of this Section, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this part shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the ~~director~~ Director, an alternative emission rate shall be established in consultation with the source owner or operator;

(B) for sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under Part (4)(B) or (C) of this Paragraph:

(i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in Part (A) of this Subparagraph, except that the emission rate specified by any applicable ~~Regulation~~ Rule in this Subchapter (or, in the absence of such a limit, the actual emission rate) shall be used, or

(ii) the actual presence of a local nuisance caused by the existing stack, as determined by the ~~director~~ Director; and

(C) for sources seeking credit after January 12, 1979, for a stack height determined under Part (4)(B) or (C) of this Paragraph where the ~~director~~ Director requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack

height credit after November 9, 1984 based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970 based on the aerodynamic influence of structures not adequately represented by Part (4)(B) or (C) of this Paragraph, a maximum ground-level concentration due in whole or part to downwash, wakes, or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

(7) "Emission limitation" means a requirement established by this Subchapter or a local air quality program certified by the Commission that limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements that limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(b) With the exception stated in Paragraphs (c) and (d) of this Rule, the degree of emission limitations required by any regulation in this Subchapter shall not be affected by:

(1) that amount of a stack height that exceeds good engineering practice; or

(2) any other dispersion technique.

(c) Paragraph (b) shall not apply to:

(1) stack heights in existence or dispersion techniques implemented before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in Section 111(a)(3) of the Clean Air Act, which were constructed, or reconstructed, or for which major modifications, as defined in ~~Regulations~~ Rules .0530 (b) and .0531 (b) of this Section were carried out after December 31, 1970; or

(2) coal-fired steam electric generating units, subject to provisions of Section 118 of the federal Clean Air Act, which began operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

However, these exemptions shall not apply to a new stack that replaces a stack that is exempted by Subparagraphs (1) and (2) of this Paragraph. These exemptions shall not apply to a new source using a stack that is exempted by Subparagraphs (1) and (2) of this Paragraph.

(d) This ~~Regulation~~ Rule shall not restrict the actual stack height of any source.

Statutory Authority G.S. 143-215.3(a)(1).

SECTION .0600 - AIR POLLUTANTS: MONITORING: REPORTING

.0601 PURPOSE AND SCOPE

(a) The purpose of this Section is to set forth the requirements of the commission relating to monitoring air pollution emissions and filing reports covering their discharge into the outdoor atmosphere of the state.

(b) This Section shall apply to all persons subject to the provisions of ~~Section 15 NCAC 2H .0600~~ 15A NCAC 2Q.

(c) Monitoring may also be required by other regulations including .0524 and .0525 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.68.

SECTION .0800 - TRANSPORTATION FACILITIES

.0801 PURPOSE AND SCOPE

(a) The purpose of this Section is to set forth requirements of the ~~commission~~ Commission relating to construction or modification of a transportation facility~~, building, structure, or installation or combination thereof~~ which may result in ~~violation of~~ an ambient air quality ~~standards~~ standard being exceeded.

(b) For purposes of this Section any transportation facility ~~which on November 15, 1973,~~ is under construction~~, or is being installed,~~ or is the subject of a contract for construction~~, installation or purchase,~~ prior to November 15, 1973, shall not be considered to be a new air pollution source.

(c) Approval to construct or modify ~~an indirect~~ a transportation facility ~~source~~ shall not relieve any owner or developer of the transportation facility ~~operator~~ of the responsibility to comply with the state control strategy and all local and state regulations which are part of the North Carolina

State Implementation Plan for Air Quality.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.109.

.0802 DEFINITIONS

For the purposes of this Section, the following definitions apply:

(1) "Construction" means any activity following land clearing or grading that engages in a program of construction specifically designed for a transportation facility in preparation for the fabrication, erection, or installation of the building components associated with the transportation facility, e.g. curbing, footings, conduit, paving, etc.

(2) "Owner or developer" means any person who owns, leases, develops, or controls a transportation facility.

(3) "Transportation facility" means a complex source as defined in G.S. 143-213(22) and is subject to the requirements of this Section.

~~(a) A person shall not construct or modify any facility which result in:~~

~~(1) open parking lots, including shopping center lots, having 1,500 or more vehicle capacity, and parking decks, including shopping center decks and parking garages, having capacity for 750 or more vehicles;~~

~~(2) subdivisions, housing developments, apartment complexes, and trailer courts having 500 or more units resulting in a population density of 7,680 per square mile (12 persons per acre) or more;~~

~~(3) stadiums and sports arenas having a seating capacity of 25,000 or more or 8,000 vehicle parking spaces or more;~~

~~(4) drive in theaters having 700 or more parking spaces; or~~

~~(5) amusement parks and recreation areas designed to serve 25,000 persons per day or more, or to accommodate parking of 8,000 vehicles or more; until he has applied for and received a permit from the Commission, and has complied with any and all terms and conditions therein.~~

~~(b) All applications for permits to construct or modify a complex source shall be made on forms provided by the Commission. The Commission may require the owner of the source to conduct air quality monitoring and perform dispersion and diffusion analysis to predict impact of proposed construction or modification on air quality.~~

~~(c) Before the Commission approves or disapproves the construction or modification of any complex source, the information submitted by the owner or operator, as well as the agency's analysis of the effect on ambient air quality (including the agency's preliminary approval or disapproval), shall be made available for public inspection in at least one location in the region affected. This shall be accomplished by publishing a notice by prominent advertisement in the region affected. A 30 day period for submittal of public comment shall be allowed.~~

~~(d) The Commission shall not approve any application for a permit which would:~~

~~(1) interfere with the attainment or maintenance of any ambient air quality standard, or~~

~~(2) result in violation of applicable portions of the implementation plan control strategy.~~

Statutory Authority G.S. 143-213; 143-215.3(a)(1); 143-215.109.

.0803 HIGHWAY PROJECTS

~~Assessments~~ Environmental assessments regarding highway projects will be reviewed in accordance with the National Environmental Policy Act and the North Carolina Environmental Policy Act. If there is no assessment, or if an assessment fails to complement the purpose of this ~~Regulation~~ Rule due to negative declaration, improper address to the air problem, insufficient information, or failure in abatement proceedings, or if the environmental impact assessment fails to show that the highway project will not result in violations of applicable portions of the control strategy, and will not interfere with attainment or maintenance of a national standard, then the following regulatory provisions shall apply:

(1) A person shall not construct or modify any highway if that highway will result in a contravention of ambient air quality standards;

(2) Before construction or modification of ~~modifying~~ any highway with an expected maximum traffic volume of 2,000 vehicles per hour or more within 10 years, a person shall apply for and have received a permit as described in 15A NCAC 2Q .0600 ~~Paragraphs (b), (c), and (d) of Regulation .0802 of this Section.~~

and shall comply with any terms and conditions therein.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.109.

.0804 AIRPORT FACILITIES

Before constructing or modifying any airport facility ~~expected~~ designed to have at least 100,000 ~~or more~~ annual aircraft operations, or at least 45 ~~or more~~ peak-hour aircraft operations (one operation equals one takeoff, or one landing) ~~within 10 years, a person~~ the owner or developer of the airport facility shall apply for and have received a permit as described in ~~Paragraphs (b), (c), and (d) of Regulation .0802 of this Section~~ 15A NCAC 2Q .0600, and shall comply with ~~any and~~ all terms and conditions therein.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.109.

.0805 PARKING FACILITIES

(a) The owner or developer of a transportation facility shall not construct or modify a parking area until he has applied for and received a permit under 15A NCAC 2Q .0600 where the parking area is:

(1) a parking lot or combination of parking lots with a parking capacity of at least 1500 spaces or a potential open parking area of at least 450,000 square feet;

(2) an existing parking lot or combination of parking lots with a parking capacity of at least 1500 spaces that will be expanded by at least 500 spaces beyond the last permitted number of spaces;

(3) a parking deck or garage with a parking capacity of 750 spaces or more;

(4) an existing parking deck or garage with a parking capacity of at least 750 spaces that will be expanded by at least 250 spaces beyond the last permitted number of spaces;

(5) a combination of parking lots, decks, and garages with a parking capacity of at least 1000 spaces or a potential parking area of at least 300,000 square feet; or

(6) an existing combination of parking lots, decks, and garages with a parking capacity of at least 1000 spaces that will be expanded by at least 500 spaces beyond the last permitted number of spaces.

(b) Parking lots, decks, or garages that are connected such that a person may drive from one to another without having to travel on a public street or road shall be considered one lot or deck. Parking lots, decks, or garages of common ownership separated by a public street or road but within 150 feet of one another and with no existing physical barrier (e.g. buildings, terrain, etc.) will be considered one facility for permit and modeling purposes.

(c) Temporary barriers shall not be used to reduce the capacity of an otherwise affected transportation facility to less than the amount which requires permitting. The design and plan shall clearly show the total parking capacity.

(d) Phased construction shall be evaluated and permitted for a period not to exceed five years from the date of application.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.109.

.0806 AMBIENT MONITORING AND MODELING ANALYSIS

(a) The Director may require the owner or developer of a transportation facility subject to the requirements of this Section to conduct ambient air quality monitoring.

(b) The Director may require the owner or developer of a transportation facility subject to the requirements of this Section to perform dispersion modeling analyses to predict the impact of proposed construction or modification of a transportation facility on ambient air quality.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.109.

SECTION .1100 - CONTROL OF TOXIC AIR POLLUTANTS

.1109 CASE-BY-CASE MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY

(a) This Rule applies only to sources of hazardous air pollutants required to have a permit under 15A NCAC 2Q .0500.

(b) This Rule shall apply only after it and 15A NCAC 2Q .0500 have been approved by the EPA, except that the requirements of Paragraph (d) of this Rule shall not apply before May 15, 1994.

(c) For the purposes of this Rule the following definitions apply:

(1) "EPA" means the United States Environmental Protection Agency or

the Administrator of U. S. Environmental Protection Agency.

(2) "Hazardous air pollutant" means any pollutant listed under Section 112(b) of the federal Clean Air Act.

(3) "MACT" means maximum achievable control technology.

(4) "Maximum achievable control technology" means:

(A) for existing sources,

(i) a MACT standard that EPA has proposed or promulgated for a particular category of facility or source,

(ii) the average emission limitation achieved by the best performing 12 percent of the existing facilities or sources for which EPA has emissions information if the particular category of source contains 30 or more sources, or

(iii) the average emission limitation achieved by the best performing five facilities or sources for which EPA has emissions information if the particular category of source contains fewer than 30 sources, or

(B) for new sources, the maximum degree of reduction in emissions that is deemed achievable but not less stringent than the emission control that is achieved in practice by the best controlled similar source.

(5) "Modification" means any physical change in, or change in the method of operation of, a facility which increases the actual emissions of any hazardous air pollutant emitted by that facility or which results in the emissions of any hazardous air pollutant not previously emitted by that facility.

(d) If EPA fails to promulgate a standard for a category of source under Section 112 of the federal Clean Air Act by the date established pursuant to Sections 112(e)(1) and (3) of the federal Clean Air Act, the owner or operator of any source in such category shall submit, within 18 months after such date, a permit application to the Director to apply MACT to such sources. Sources subject to this Paragraph shall be in compliance with this Rule within three years from the date that the permit is issued.

(e) The owner or operator of an existing facility shall apply MACT to all sources in that facility that are modified or involved in a modification. MACT for new sources shall be applied to sources at an existing facility that is constructed or reconstructed.

(f) The owner or operator of any new facility shall apply MACT to the new facility before beginning operation.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (10).

SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0600 - AIR QUALITY PERMITS

.0601 PURPOSE AND SCOPE

~~(a) The following sources or activities are not likely to contravene any applicable ambient air quality or emission control standard, and therefore, are not required to obtain a permit:~~

~~(1) air conditioning or comfort ventilation systems which do not transport, remove, or exhaust product or byproduct to the atmosphere;~~

~~(2) combustion sources serving heating systems which provide comfort heat for residences;~~

~~(3) laboratory equipment used for chemical or physical analysis;~~

~~(4) nonstationary internal combustion engines and vehicles;~~

~~(5) equipment which emits only nitrogen, oxygen, carbon dioxide, and/or water vapor;~~

~~(6) maintenance or repair of existing equipment that does not result in an increase to the emission of air pollutants;~~

~~(7) replacement of existing equipment with like equipment of same size, type, and function that does not result in an increase to the emission of air pollutants and that is described by the current permit, including the application, except for characteristics that could not affect pollution control, for example, serial numbers;~~

~~(8) smudge pots for orchards or small outdoor heating devices to prevent freezing of plants;~~

~~(9) fuel burning equipment firing exclusively gaseous fuel with the total heat input rating of 250 million BTU per hour or less;~~

(10) fuel burning equipment firing exclusively No. 1 or No. 2 fuel oil with the total heat input rating of 100 million BTU per hour or less;

(11) fuel burning equipment firing a mixture of gaseous fuel, No. 1 fuel oil or No. 2 fuel oil, in any proportion, with the total heat input rating of 100 million BTU per hour or less.

(b) The owner or operator of any source required to have a permit may request the director to exempt the source from having to have a permit. The request shall be in writing. Along with the request, the owner or operator shall submit supporting documentation to show that air quality and emission control standards will not be, nor are likely to be, contravened. If the documentation shows to the satisfaction of the director that air quality and emission control standards will not be, nor are likely to be, contravened, a permit shall not be required.

(c) The owner or operator of all sources for which there is an ambient air quality or emission control standard that is not exempted by Paragraph (a) or (b) of this Rule shall apply for a permit. The owner or operator of a source required to have a permit shall not begin constructing or operating the source if it is a new source or modify the source if it is an existing source without first obtaining a permit.

(d) Any person who constructs or modifies a complex source subject to Section 15 NCAC 2D .0800 shall obtain a permit in accordance with Rules .0602 through .0609 of this Section. If the source is excepted in Section 15 NCAC 2D .0800, a permit shall not be required.

(e) Any exemption allowed by Paragraph (a) or (b) of this Rule does not apply to sources subject to Rule 15A NCAC 2D .0524, .0525, or .0530. The owner or operator of these sources shall obtain a permit before beginning construction or operation.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

.0602 DEFINITIONS

Unless the context otherwise requires, the terms used in this Section shall be used as defined in G.S. 143-213 and as follows:

(1) "Director" means the Director of the Division of Environmental Management.

(2) "Plans and Specifications" means the completed application (AQ-22 or AQ-81) and any other documents required to define the operating conditions of the air pollution source.

(3) "To Alter or Change" means to modify equipment or processes of existing facilities. This includes equipment additions, deletions, adjustments, and/or operational practices which increase emissions or affect the compliance status of the equipment or process.

(4) "Source" means the origin of emission of an air pollutant.

(5) "Staff" means the air quality section, division of environmental management, or its successor.

(6) "Maximum feasible control" means the maximum degree of reduction for each pollutant subject to regulation in this Section using the best technology that is available taking into account, on a case-by-case basis, energy, environmental, and economic impacts and other costs.

Statutory Authority G. S. 143-213; 143-215.3(a)(1).

.0603 APPLICATIONS

(a) Permit application shall be made in duplicate on official forms of the Director and shall include plans and specifications giving all necessary data and information as required by the application form. These application forms shall be used: air contaminant sources Form AQ-22, and complex sources Form AQ-81. These forms may be obtained by writing to the address in Paragraph (b) of this Rule. Whenever the information provided on these forms does not adequately describe the source and its air pollution abatement equipment, the Director may request that the applicant provide any other information that the Director considers necessary to evaluate the source and its air pollution abatement equipment.

(b) A permit or permit renewal application shall be filed in writing with the Director, Division of Environmental Management, P. O. Box 29535, Raleigh, North Carolina 27626-0535. Application for permit renewal or ownership transfer may be by letter to the Director, if no alteration or modification has been made to the originally permitted source. A non-refundable permit application processing fee shall accompany each application. The permit application processing fees are in Rule .0609 of this Section. Each permit or renewal application is incomplete until the permit application processing fee is received.

(c) Before acting on any permit application, the

Director may request any information from an applicant and conduct any inquiry or investigation that he considers necessary and require the submission of plans and specifications.

(d) Before issuing any permit for:

(1) a source to which 15A NCAC 2D .0530 or .0531 applies;

(2) a source whose emission limitation is based on a good engineering practice stack height that exceeds the height defined in 15A NCAC 2D .0533(a)(4)(A), (B), or (C);

(3) a requirement for controls more stringent than the applicable emission standards in Section 15A NCAC 2D .0500 in accordance with 15A NCAC 2D .0501, or

(4) any other source that may be designated by the Director based on significant public interest, the information submitted by the owner or operator, as well as the agency's analysis of the effect on ambient air quality, shall be made available for public inspection in at least one location in the region affected. This shall be accomplished by publishing in the region affected a notice by prominent advertisement which shall provide a 30 day period for submittal of public comment and an opportunity for a public hearing request. Confidential material will be handled in accordance with G.S. 143-215.3(a)(2).

(e) A public hearing shall be held before the issuance of any permit containing any one of these conditions:

(1) any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, when such limitations are necessary to assure that rules in Section 15A NCAC 2D .0900 do not apply in accordance with 15A NCAC 2D .0901 and .0902;

(2) an allowance of controls different than the applicable emission standards in Section 15A NCAC 2D .0900 in accordance with 15A NCAC 2D .0905;

(3) an alternate compliance schedule promulgated in accordance with 15A NCAC 2D .0910;

(4) the quantity of solvent borne ink that may be used by a printing unit or printing systems in accordance with 15A NCAC 2D .0936; or

(5) an allowance of a particulate emission rate of 0.08 grains per dry standard cubic foot for incinerators constructed before July 1, 1987, in accordance with 15A NCAC 2D .1205(b)(2).

The public hearing shall be preceded by a 30 day period of public notice during which the agency's analysis and draft permit shall be available for public inspection in the appropriate regional office. If and when a permit containing these conditions is issued, it will become a part of the North Carolina State Implementation Plan for Air Quality (SIP) as an appendix available for inspection at Department of Environment, Health, and Natural Resources regional offices. The permit will be submitted to the U.S. Environmental Protection Agency for inclusion as part of the federally approved state implementation plan.

(f) In a permit application for an alternative mix of controls under 15A NCAC 2D .0501(f), the owner or operator of the facility shall demonstrate to the satisfaction of the Director that the proposal is equivalent to the existing requirements of the SIP in total allowed emissions, enforceability, reliability, and environmental impact.

(1) With the exception stated in Subparagraph (2) of this Paragraph, a public hearing shall be held before any permit containing alternative emission limitations is issued. The public hearing shall be preceded by a 30 day period of public notice during which the agency's analysis and draft permit shall be available for public inspection and comment in the appropriate regional office. If and when a permit containing these conditions is issued, it will become a part of the SIP as an appendix available for inspection at the department's regional offices. Until the U.S. Environmental Protection Agency (EPA) approves the SIP revision embodying the permit containing an alternative mix of controls, the facility shall continue to meet the otherwise applicable existing SIP requirements. The revision will be approved by EPA on the basis of the revision's consistency with EPA's "Policy for Alternative Emission Reduction Options Within State Implementation Plans" as

promulgated in the Federal Register of December 11, 1989, pages 71780-71788, and subsequent rulings.

(2) The permit applicant(s) may choose to provide a written acknowledgment that the emission rate limitations or control techniques allowed under an alternative mix of controls involving only volatile organic compounds are fully enforceable by EPA as a part of the SIP and may be enforced pursuant to Section 304(a) of the federal Clean Air Act. The acknowledgment shall also bind the source owner's successors. If the acknowledgment is provided to the Director, the Director will promptly transmit to EPA a copy of the permit application. Before the Director issues the permit, there shall be a 30-day period of public notice during which the agency's analysis and draft permit shall be available for public inspection and comment in the appropriate regional office. If and when such permit is issued, the Director will promptly transmit a copy to EPA. The owner or operator of a source located in a nonattainment area for ozone as designated by the Environmental Protection Agency may not initiate the use of this option after November 30, 1989; he shall follow the procedures set out in Subparagraph (1) of this Paragraph.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

.0604 FINAL ACTION ON PERMIT APPLICATIONS

(a) The director may:

(1) issue a permit or a renewal containing the conditions necessary to carry out the purposes of G.S. Chapter 143, Article 21B;

(2) modify or revoke any permit upon giving 60 days notice to the person affected;

(3) deny a permit application when necessary to carry out the purposes of G.S. Chapter 143, Article 21B.

(b) Any person whose application for a permit or renewal is denied or is granted subject to conditions which are unacceptable to him or whose permit is modified or revoked shall have the right to a hearing. The person will have 30 days following the notice of the director's decision on the application in which to request the hearing.

Statutory Authority G.S. 143-215.108; 143-215.109; 143-215.3(a)(1).

.0605 ISSUANCE: REVOCATION: AND ENFORCEMENT OF PERMITS

(a) Permits shall be issued or renewed for a period of time considered reasonable by the director, but period shall not exceed five years.

(b) Any permit or permit renewal issued under this Regulation may be revoked or modified if:

(1) the information contained in the application or presented in support thereof is determined to be incorrect,

(2) the conditions under which the permit or permit renewal was granted have changed,

(3) violations of conditions contained in the permit have occurred, or

(4) the permit holder fails to pay the annual administering and compliance monitoring fee required under Regulation .0609 of this Section within 30 days after being billed.

Statutory Authority G.S. 143-215.3(a)(1), (1a),(1b); 143-215.108; 143-215.109; 143-215.114.

.0606 DELEGATION OF AUTHORITY

The director may delegate the processing of permit applications and the issuance of permits to the Chief of the Air Quality Section, the regional office supervisor, or the Assistant Chief for Permitting as he considers appropriate. This delegation shall not include the authority to deny a permit application or to revoke, modify, or suspend a permit.

Statutory Authority G.S. 143-215.3(a)(1),(4).

.0607 COPIES OF REFERENCED DOCUMENTS

(a) Copies of applicable Code of Federal Regulations sections referred to in this Section and the North Carolina State Implementation Plan for Air Quality appendix of conditioned permits are available for public inspection at Department of Environment, Health, and Natural Resources regional offices. They are:

(1) Asheville Regional Office, Interchange

Building, 59 Woodfin Place, Asheville, North Carolina 28801;

(2) Winston-Salem Regional Office, Suite 100, 8025 North Point Boulevard, Winston-Salem, North Carolina 27106;

(3) Mooresville Regional Office, 919 North Main Street, Mooresville, North Carolina 28115;

(4) Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina 27611;

(5) Fayetteville Regional Office, Wachovia Building, Suite 714, Fayetteville, North Carolina 28301;

(6) Washington Regional Office, 1424 Carolina Avenue, Farish Building, Washington, North Carolina 27889;

(7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.

(b) Copies of such regulations can be made at these regional offices for ten cents ($0.10) per page.

Statutory Authority G.S. 150B-21.6.

.0609 PERMIT FEES

(a) For the purposes of this Rule, the following definitions apply:

(1) "Allowable emissions" means the actual emissions that are permitted to occur if the source were to operate constantly under maximum permitted conditions. Sources may request permit conditions that limit emissions to less than regulation allowable or that restrict operations. If neither a rule nor a permit limiting emissions from a particular source specifies an emission rate, then the allowable emissions shall be the actual emissions that are expected to occur if the source were to operate constantly under maximum conditions allowed by the permit. When a new source is added to an existing facility, the allowable emissions for the facility shall be the sum of the new and existing sources.

(2) "Complex source" means a source requiring a permit under Section 15A NCAC 2D .0800.

(3) "Major facility" means any plant site where the allowable emissions of any one regulated pollutant under Subchapter 2D of this Title are 100 tons per year or more, except a site that is only a complex source.

(4) "Minor facility" means any plant site where the allowable emissions of each regulated pollutant under Subchapter 2D of this Title are each less than 100 tons per year, except a site that is only a complex source.

(5) "NESHAP source" means a source subject to a national emission standard for hazardous air pollutants in 15A NCAC 2D .0525.

(6) "NSPS source" means a source subject to a new source performance standard in 15A NCAC 2D .0524.

(7) "PSD facility" means a plant site having one or more sources subject to the prevention of significant deterioration requirements of 15A NCAC 2D .0530 or a plant site applying for a permit for a major stationary source or a major modification subject to 15A NCAC 2D .0530.

(b) The following fees shall be charged for processing an application for an air permit and for administering and monitoring compliance with the terms of an air permit:

Permit Application Processing Fee	Annual Administering and Compliance Monitoring Fee

Category	Standard	Simple Renewal	Standard	In Compliance
Minor facility	$50	$25	$250	$190
Minor facility with an NSPS source	60	35	500	380
Major facility	100	75	850	640
PSD facility	400	100	1375	1030
Facility with a NESHAP source	100	75	850	640
Complex source	100	0	850	640

If a facility or source belongs to more than one category, the fees shall be those of the applicable category with the highest fees. No fees are required to be paid under this Rule by a farmer who submits an application or receives a permit that pertains to his farming operations. If the total payment for fees required for all permits under G. S. 143-215.3(a)(1b) for any single facility will exceed seven thousand five hundred dollars ($7,500) per year, then the total for all these fees will be reduced for this facility so that the total payment is seven thousand five hundred dollars ($7,500) per year.

(e) The standard permit application processing fee listed in Paragraph (b) of this Rule is required for technical changes such as changing the location of a source; adding additional emission sources, pollutants, or control equipment; or changing a permit condition such that a change in air pollutant emissions could result. A simple renewal permit application processing fee is required for permit renewals without technical changes. A twenty five dollar ($25) permit application processing fee is required for administrative changes such as ownership transfers, construction date changes, test date changes, or reporting procedure changes. No permit application processing fee is required for changes to an unexpired permit initiated by the Director to correct processing errors, to change permit conditions, or to implement new standards.

(d) If a facility has been in full compliance with all applicable administrative, regulatory, and self-monitoring reporting requirements and permit conditions during the previous calendar year, the annual administering and compliance monitoring fee shall be that which is in the " Annual Administering and Compliance Monitoring Fee In Compliance" column. A facility shall be considered to have been in compliance during the previous calendar year if it has not been sent any Notices of Non-compliance or Notices of Violation during that calendar year. If a Notice of Non-compliance or a Notice of Violation was based on erroneous information, the Director may send a letter of correction to the permittee clearing the record for compliance purposes. If a Notice of Non-compliance or Notice of Violation is still in the process of being contested or appealed, the permit holder shall pay the in compliance fee. At the conclusion of the contest or appeal process the permit holder shall pay the difference between the standard fee and in compliance fee unless the notice is found to be erroneous.

(e) If the actual emissions of each pollutant from a minor facility are no more than three tons during the previous calendar year, the permit holder need not pay the annual administering and compliance monitoring fee provided that actual emissions continue to be no more than three tons during the annual period for which the fee is being billed.

(f) Payment of permit application processing fees and annual administering and compliance monitoring fees shall be by check or money order made payable to the N.C. Department of Environment, Health, and Natural Resources. The payment should refer to the air permit application or permit number.

(g) The payment of the permit application processing fee required by Paragraph (b) or (c) of this Rule shall accompany the permit, permit renewal, or permit modification application and is non-refundable. If the permit application processing fee is not paid when the application is filed, the application shall be considered incomplete until the fee is paid.

(h) The initial annual administering and compliance monitoring fee shall be paid in accordance with Paragraph (m) of this Rule when a permit, modified permit, or renewed permit is issued for which a permit application processing fee specified in Paragraph (b) or (c) of this Rule has been paid. For complex sources only an initial annual administering and compliance monitoring fee shall be paid; no subsequent annual administering and compliance monitoring fee is necessary for complex sources unless technical changes are made in the permit.

~~(i) If a permit or permit modification results in changing the category in which a facility belongs, the next annual administering and compliance monitoring fee shall be paid for category in which the facility belongs after the permit or permit modification is issued.~~

~~(j) Any permit holder claiming exemption under Paragraph (e) of this Rule shall certify to the Director within 30 days after being billed that the actual emissions of each pollutant from the facility are no more than three tons during the previous calendar year.~~

~~(k) A facility which has not begun operations or which has ceased all operations at a site shall not be required to pay the next annual administering and compliance monitoring fee provided operations are not begun or resumed during that annual period. Any resumed operations shall necessitate the payment of the entire annual fee. A facility that is moved to a new site may receive credit for any unused portion of an annual administering and compliance monitoring fee if the permit for the old site is relinquished. Only one annual administrative and compliance monitoring fee needs to be paid annually for each permit.~~

~~(l) A fee payer with multiple permits may arrange to consolidate the payment of annual administrative and compliance monitoring fees into one annual payment.~~

~~(m) If, within 30 days after being billed, the permit holder fails to pay an annual administering and compliance monitoring fee or fails to certify an exemption under Paragraphs (e) and (j) or (k) of this Rule, the Director may initiate action to revoke the permit.~~

~~(n) In order to avoid violation of the statutory limit that total permit fees collected in any year not exceed 30 percent of the total budget from all sources of environmental permitting and compliance programs, the Division shall in the first half of each state fiscal year project revenues from all sources including fees for the next fiscal year. If this projection shows that the statutory limit will be exceeded, rulemaking shall be commenced in order to have an appropriately adjusted fee schedule which will avoid excessive revenue collection from permit fees.~~

Statutory Authority G.S. 143.215.3(a)(1),(1a), (1b).

SUBCHAPTER 2Q - AIR QUALITY PERMIT PROCEDURES

SECTION .0100 - GENERAL PROVISIONS

.0101 REQUIRED AIR QUALITY PERMITS

(a) No owner or operator shall do any of the following activities, that is not otherwise exempted, without first applying for and obtaining an air quality permit:

(1) construct, operate, or modify a source subject to an applicable standard, requirement, or rule that may emit any regulated pollutant or one or more of the following:

(A) sulfur dioxide,
(B) total suspended particulates,
(C) particulate matter (PM10),
(D) carbon monoxide,
(E) nitrogen oxides,
(F) volatile organic compounds,
(G) lead and lead compounds,
(H) fluorides,
(I) total reduced sulfur,
(J) reduced sulfur compounds,
(K) hydrogen sulfide,
(L) sulfuric acid mist,
(M) asbestos,
(N) arsenic and arsenic compounds,
(O) beryllium and beryllium compounds,
(P) cadmium and cadmium compounds,
(Q) chromium(VI) and chromium(VI) compounds,
(R) mercury and mercury compounds,
(S) hydrogen chloride,
(T) vinyl chloride,
(U) benzene,
(V) ethylene oxide,
(W) dioxins and furans,
(X) odor,
(Y) ozone, or
(Z) any toxic air pollutant listed in 15A NCAC 2D .1104;

(2) construct, operate, or modify a facility that has the potential to emit at least 10 tons per year of any hazardous air pollutant or 25 tons per year of all hazardous air pollutants combined or that are subject to requirements established under the following sections of the federal Clean Air Act:

(A) Section 112(d), emissions standards;
(B) Section 112(g), modifications (but only for the facility subject to Section 112(g)(2));
(C) Section 112(j), federal failure to promulgate standards;
(D) Section 112(r), accidental releases; or

(3) enter into an irrevocable contract or allow or cause the construction, operation, or modification of an air-cleaning device.

(b) There are two types of air quality permits:

(1) Stationary Source Construction and Operation Permit: The owner or operator of a new, modified, or existing facility or source shall not begin construction or operation without first obtaining a construction and operation permit in accordance with the standard procedures under Section .0300 of this Subchapter. Title V facilities are subject to the Title V procedures under Section .0500 of this Subchapter including the acid rain procedures under Section .0400 of this Subchapter. A facility may also be subject to the air toxic procedures under 15A NCAC 2H .0610.

(2) Transportation Facility Construction Permit. The owner or operator of a transportation facility subject to the requirements of 15A NCAC 2D .0800 shall obtain a construction only permit following the procedures under Section .0600.

(c) Fees shall be paid in accordance with the requirements of Section .0200 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

.0102 ACTIVITIES EXEMPTED FROM PERMIT REQUIREMENTS

(a) If a source is subject to any of the following rules, then the source is not exempted from permit requirements, and the exemptions in Paragraph (b) of this Rule do not apply:

(1) new source performance standards under 15A NCAC 2D .0524, except new residential wood heaters;

(2) national emission standards for hazardous air pollutants under 15A NCAC 2D .0525, except asbestos demolition and renovation activities;

(3) prevention of significant deterioration under 15A NCAC 2D .0530;

(4) new source review under 15A NCAC 2D .0531 and .0532;

(5) sources of volatile organic compounds subject to the requirements of 15A NCAC 2D .0900 that are located in Mecklenburg and Gaston Counties;

(6) sources required to apply maximum achievable control technology for hazardous air pollutants under 15A NCAC 2D .1109 or 40 CFR Part 63; or

(7) sources at facilities subject to 15A NCAC 2D .1100.

(b) The following activities do not need a permit or permit modification under this Subchapter; however, the Director may require the owner or operator of these activities to register them under 15A NCAC 2D .0200:

(1) activities exempted because of category:

(A) maintenance, upkeep, and replacement:

(i) maintenance, structural changes, or repairs which do not change the capacity of such process, fuel-burning, refuse-burning, or control equipment, and do not involve any change in quality, nature, or quantity of emission of regulated air pollutants;

(ii) housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, or insulation removal; or

(iii) replacement of existing equipment with equipment of the same size, type, and function that does not result in an increase to the emission of regulated air pollutants, that does not affect the compliance status, and that is described in the current permit, including the application, except for characteristics that could not affect air pollution control (for example, serial numbers);

(B) air conditioning or ventilation: comfort air conditioning or comfort ventilating systems which do not transport, remove, or exhaust regulated air pollutants to the atmosphere;

(C) laboratory equipment:

(i) laboratory equipment used exclusively for chemical or physical analysis for quality control purposes; or

(ii) non-production laboratory equipment used at non-profit health or non-profit educational institutions for chemical or physical analyses, bench scale experimentation or

training, or instruction;

(D) storage tanks: storage tanks used solely to store fuel oils, kerosene, diesel, jet fuel, crude oil, used motor oil, natural gas, or liquified petroleum gas;

(E) combustion and heat transfer equipment:

(i) space heaters operating by direct heat transfer and used solely for comfort heat;

(ii) residential wood stoves, heaters, or fireplaces;

(iii) hot water heaters which are used for domestic purposes only and are not used to heat process water;

(F) wastewater treatment processes: industrial wastewater treatment processes in which the wastewater or wastewater treatment process does not contain volatile organic compounds or hazardous air pollutants; or

(G) miscellaneous:

(i) motor vehicles;

(ii) refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or in conjunction with air pollution control equipment; or

(iii) equipment that does not emit any regulated air pollutants.

(2) activities exempted because of size or production:

(A) storage tanks:

(i) storage tanks with a storage capacity of no more than 1100 gallons storing organic liquids, excluding hazardous air pollutants, with a true vapor pressure of no more than 10.8 pounds per square inch absolute at 70°F; or

(ii) underground storage tanks with a storage capacity of no more than 2500 gallons storing organic liquids, excluding hazardous air pollutants, with a true vapor pressure of no more than 10.8 psi absolute at 70°F and an annual throughput of no more than 50,000 gallons per year;

(B) combustion and heat transfer equipment:

(i) combustion sources with a heat input of no more than 10,000,000 BTU per hour if the emissions from the combustion source is solely from kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, natural gas, or liquified petroleum gas; or

(ii) space heaters burning waste oil if:

(I) The heater burns only oil that the owner or operator generates or used oil from do-it-yourself oil changers who generate used oil as household wastes;

(II) The heater is designed to have a maximum capacity of not more than 500,000 Btu per hour; and

(III) The combustion gases from the heater are vented to the ambient air.

(iii) emergency use generators and other internal combustion engines, except motor vehicles, that produce no more than:

(I) 40 kilowatts or 60 horsepower for natural gas-fired engines,

(II) 110 kilowatts or 150 horsepower for liquified petroleum gas-fired engines, or

(III) 35 kilowatts or 50 horsepower for diesel-fired engines; or

(C) miscellaneous:

(i) any emissions unit or source with a potential to emit no more than 1.0 pound in any hour and 4.38 tons per year (8760 hours) before control of each regulated pollutant that is not a hazardous air pollutant;

(ii) emissions of hazardous air pollutants below the de minimis emissions rates in 40 CFR Part 63;

(iii) electrostatic dry powder coating operations equipped with powder recovery including curing ovens with a heat input of no more than 10,000,000 BTU per hour; or

(iv) any incinerator owned and

operated by a farmer covered under Paragraph (d) of 15A NCAC 2D .1201;

(c) Emissions from stationary source activities identified in Paragraph (b) of this Rule shall be included in determining compliance with the toxic air pollutant requirements under 15A NCAC 2D .1100 or 2H .0610.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.108.

.0103 DEFINITIONS

For the purposes of this Subchapter, the definitions in G.S. 143-212 and 143-213 and the following definitions apply:

(1) "Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radiative substance or matter which is emitted into or otherwise enters the ambient air.

(2) "Alter or change" means to make a modification.

(3) "Applicant" means the person who is applying for an air quality permit from the Division.

(4) "Application package" means all elements or documents needed to make an application complete.

(5) "CFR" means Code of Federal Regulations.

(6) "Construction" means change in the method of operation or any physical change (including on-site fabrication, erection, installation, replacement, demolition, or modification of an emissions unit) that would result in a change in emissions or affect the compliance status.

(7) "Director" means the Director of the Division of Environmental Management.

(8) "Division" means the Division of Environmental Management.

(9) "Equivalent unadulterated fuels" means used oils that have been refined such that the content of toxic additives or contaminants in the oil are no greater than those in unadulterated fossil fuels.

(10) "EPA" means the United States Environmental Protection Agency or the Administrator of the Environmental Protection Agency.

(11) "Facility" means all of the pollutant emitting activities that are located on one or more contiguous or adjacent properties under common control.

(12) "Federally enforceable" or "federal-enforceable" means enforceable by EPA.

(13) "Hazardous air pollutant" means any pollutant which has been listed pursuant to Section 112(b) of the federal Clean Air Act. Pollutants which are listed only in 15A NCAC 2D .1104 (Toxic Air Pollutant Guidelines), but not pursuant to Section 112(b), are not included in this definition.

(14) "Insignificant activities" means any activity exempted under Rule .0102 of this Section.

(15) "Irrevocable contract" means a contract that cannot be revoked without substantial penalty.

(16) "Modification" means any physical change or change in method of operation that results in an increase in emissions or affects compliance status of the source or facility.

(17) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, emissions unit, stationary source, or air pollution control equipment.

(18) "Permittee" means the person who has received an air quality permit from the Division.

(19) "Potential emissions" means the rate of emissions of any air pollutant which would occur at the facility's maximum capacity to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a facility to emit an air pollutant shall be treated as a part of its design if the limitation is federally enforceable. Such physical or operational limitations include air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed. Potential emissions include fugitive emissions from as specified in the definition of major source in 40 CFR 70.2. Potential emissions do not include a facility's secondary emissions such as those from motor vehicles associated with the facility and do not include emissions from insignificant activities listed in Rule .0102(b)(1) of this Section.

(20) "Regulated air pollutant" means:
- (a) nitrogen oxides or any volatile organic compound;
- (b) any pollutant for which there is an ambient air quality standard under Section 15A NCAC 2D .0400;
- (c) any pollutant regulated under 15A NCAC 2D .0524 or .0525 or 40 CFR Part 60, 61, or 63;
- (d) any pollutant subject to a standard promulgated under Section 112 of the federal Clean Air Act or other requirements established under Section 112 of the federal Clean Air Act, including Section 112(g) (but only for the facility subject to Section 112(g)(2) of the federal Clean Air Act), (j), or (r) of the federal Clean Air Act; or
- (e) any Class I or II substance listed under Section 602 of the federal Clean Air Act.

(21) "Source" means any stationary article, machine, process equipment, or other contrivance, or combination thereof, from which air pollutants emanate or are emitted, either directly or indirectly.

(22) "Toxic air pollutant" means any of the carcinogens, chronic toxicants, acute systemic toxicants, or acute irritants that are listed in 15A NCAC 2D .1104.

(23) "Transportation facility" means a complex source as defined at G.S. 143-213(22) and is subject to the requirements of 15A NCAC 2D .0800.

(24) "Unadulterated fossil fuel" means fuel oils, coal, natural gas, or liquefied petroleum gas to which no toxic additives have been added that could result in the emissions of a toxic air pollutant listed under 15A NCAC 2D .1104.

Statutory Authority G.S. 143-215.3(a)(1); 143-212; 143-213.

.0104 WHERE TO OBTAIN AND FILE PERMIT APPLICATIONS

(a) Official application forms for a permit or permit modification may be obtained from and shall be filed in writing with the Director, Division of Environmental Management, P. O. Box 29535, Raleigh, North Carolina 27626-0535 or any of the regional offices listed under Rule .0105 of this Section.

(b) The number of copies of applications to be filed are specified in Rules .0304 (construction and operation permit procedures), .0405 (acid rain permit procedures), .0507 (Title V permit procedures), and .0602 (transportation facility construction air permit procedures) of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

.0105 COPIES OF REFERENCED DOCUMENTS

(a) Copies of applicable Code of Federal Regulations (CFR) sections referred to in this Section are available for public inspection at Department of Environment, Health, and Natural Resources regional offices. The regional offices are:
- (1) Asheville Regional Office, Interchange Building, 59 Woodfin Place, Asheville, North Carolina 28801;
- (2) Winston-Salem Regional Office, Suite 100, 8025 North Point Boulevard, Winston Salem, North Carolina 27106;
- (3) Mooresville Regional Office, 919 North Main Street, Mooresville, North Carolina 28115;
- (4) Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina 28115;
- (5) Fayetteville Regional Office, Wachovia Building, Suite 714, Fayetteville, North Carolina 28301;
- (6) Washington Regional Office, 1424 Carolina Avenue, Farish Building, Washington, North Carolina 27889;
- (7) Wilmington Regional Office, 7225 Wrightsville Avenue, Wilmington, North Carolina 28403.

(b) Permit applications and permits may be reviewed at the Central Files office in the Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina, excluding information entitled to confidential treatment under Rule .0107 of this Section.

(c) Copies of CFR, permit applications, and permits can be made for ten cents ($0.10) per page.

Statutory Authority G.S. 150B-14.

.0106 INCORPORATION BY REFERENCE

(a) Referenced CFR contained in this Subchapter are incorporated by reference.

(b) The CFR incorporated by reference in this Subchapter shall automatically include any later

amendments thereto unless a specific rule specifies otherwise.

(c) The CFR may be purchased from the Superintendent of Documents, P. O. Box 371954, Pittsburgh, PA 15250. The cost of the 40 CFR Parts 61 to 80 is fourteen dollars ($14.00) as of January 1992 price.

Statutory Authority G.S. 150B-21.6.

.0107 CONFIDENTIAL INFORMATION

(a) All information required to be submitted to the Commission or the Director under this Subchapter or Subchapter 2D of this Title shall be disclosed to the public unless the person submitting the information can demonstrate that the information is entitled to confidential treatment under G.S. 143-215.3(a)(2).

(b) A request that information be treated as confidential shall be made by the person submitting the information at the time that the submittal is made. The request shall state in writing reasons why the information should be held confidential. Any request not meeting these requirements shall be invalid.

(c) The Director shall make a preliminary determination of which information is entitled to confidential treatment and shall notify the person requesting confidential treatment of his decision within 90 days of receipt of a request to treat information as confidential.

(d) Information necessary to determine compliance with standards contained in 15A NCAC 2D or permit terms and conditions shall not be held confidential.

(e) Confidential treatment of any information that has been classified as confidential under this Rule shall cease five years following the date of the Director's determination unless the person who originally requested confidential treatment, or his successor, requests that the information continue to be treated as confidential for another five years.

(f) Any material classified as confidential or treated as if it were classified as confidential because of a request for confidential treatment before February 1, 1994, shall cease to be classified confidential on February 1, 1999, unless the person, or his successor, who requested confidential treatment requests that the information continue to be treated as confidential for another five years.

Statutory Authority G.S. 143-215.3(a)(1),(2).

.0108 DELEGATION OF AUTHORITY

The Director may delegate the processing of permit applications and the issuance of permits to the Deputy Director, the Chief of the Air Quality Section, the regional office supervisor, any air quality supervisor in the regional offices, or any supervisor in the Permitting Branch of the Air Quality Section as he considers appropriate. This delegation shall not include the authority to deny a permit application or to revoke or suspend a permit.

Statutory Authority G.S. 143-215.3(a)(1), (4).

.0109 COMPLIANCE SCHEDULE FOR PREVIOUSLY EXEMPTED ACTIVITIES

(a) This Rule applies to sources that have heretofore been exempted from needing a permit, but because of change in permit exemptions, they are now required to have a permit.

(b) If a source to which this Rule applies is located at a facility that currently has an air quality permit, the source shall be added to the air quality permit of facility the next time that permit is revised or renewed, whichever occurs first.

(c) If a source to which this Rule applies is located at a facility that currently does not have an air quality permit, the owner or operator of that source shall apply for a permit:

(1) by the schedule in Rule .0506 of this Subchapter if source is subject to the requirements of Section .0500 of this Subchapter or

(2) by January 1, 1998, if source is not subject to the requirements of Section .0500 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

.0110 RETENTION OF PERMIT AT PERMITTED FACILITY

The permittee shall retain a copy of all active permits issued under this Subchapter at the facility identified in the permit.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

.0111 APPLICABILITY DETERMINATIONS

Any person may submit a request in writing to the Director requesting a determination as to whether a particular source or facility that the person owns or operates or proposes to own or operate is subject to any of the permitting require-

ments under this Subchapter. The request shall contain such information believed to be sufficient for the Director to make the requested determination. The Director may request any additional information that is needed to make the determination.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

SECTION .0200 - PERMIT FEES

.0201 APPLICABILITY

(a) This Section, except for Rule .0207 (Annual Emissions Reporting) of this Section, is applicable:

(1) as of the permit anniversary date on or after July 1, 1994, to facilities that have or will have actual emissions of:

(A) 100 tons per year or more of at least one regulated air pollutant;

(B) 10 tons per year or more of at least one hazardous air pollutant; or

(C) 25 tons per year or more of all hazardous air pollutants combined; and

(2) as of the permit anniversary date on or after October 1, 1994, to all facilities other than the facilities described in Subparagraph (a)(1) of this Rule.

(b) Before the applicability date of Paragraph (a) of this Rule, the fees of 15A NCAC 2H .0609 are in effect.

(c) Rule .0207 of this Section is applicable to all facilities as of its effective date.

Statutory Authority G.S. 143.215.3(a)(1),(1a), (1b), (1d); 143-215.106A; 150B-21.6.

.0202 DEFINITIONS

For the purposes of this Section, the following definitions apply:

(1) "Actual emissions" means the actual rate of emissions in tons per year of any air pollutant emitted from the facility over the preceding calendar year. Actual emissions shall be calculated using the sources' actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. Actual emissions include emissions during violations, malfunctions, start-ups, and shut-downs, and include fugitive emissions as specified in the definition of major source in 40 CFR 70.2. Actual emissions do not include a facility's secondary emissions such as those from motor vehicles associated with the facility and do not include emissions from insignificant activities listed in Rule .0102(b)(1) of this Section.

(2) "Before-control potential emissions" means the rate of emissions of any air pollutant which would occur at the facility's maximum capacity to emit any air pollutant under its physical and operational design with any operational limitations, such as restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, but before any air pollution control equipment. Before-control potential emissions include fugitive emissions as specified in the definition of major source in 40 CFR 70.2. Before-control potential emissions do not include a facility's secondary emissions such as those from motor vehicles associated with the facility and do not include emissions from insignificant activities listed in Rule .0102(b)(1) of this Section.

(3) "Title V facility" means a facility that has or will have potential emissions of:

(a) 100 tons per year or more of at least one regulated air pollutant;

(b) 10 tons per year or more of at least one hazardous air pollutant; or

(c) 25 tons per year or more of all hazardous air pollutants combined.

(4) "Deferred facility" means a facility which would be required to have permit under Title V except that such facility may be exempted under 40 CFR 70.3(b).

(5) "Synthetic facility" means a facility which would be a Title V facility except that one or more federally-enforceable operational limitations in the permit restrict the potential emissions by limiting hours of operation, the type or amount of material combusted, stored, or processed, or similar parameters. Emission limitations produced by pollutant control equipment described in the permit do not constitute operational limitations in the permit for the purpose of this definition.

(6) "Intermediate facility" means a facility that has or will have before-control potential emissions of:

(a) 100 tons per year or more of at least one regulated air pollutant;

(b) 10 tons per year or more of at least one

hazardous air pollutant; or

(c) 25 tons per year or more of all hazardous air pollutants combined;

and that is not a Title V facility, a deferred facility, nor a synthetic facility, and that is not solely a transportation facility.

(7) "Small facility" means a facility that has or will have before-control potential emissions of:

(a) less than 100 tons per year of each regulated air pollutant;

(b) less than 10 tons per year of each hazardous air pollutant; and

(c) less that 25 tons per year of all hazardous air pollutants combined;

and that is not a Title V facility, a deferred facility, nor a synthetic facility, and that is not solely a transportation facility.

(8) "General facility" means a facility obtaining a permit under Rule .0310 or .0509 of this Subchapter.

Statutory Authority G.S. 143.215.3(a)(1),(1a), (1b), (1d); 150B-21.6.

.0203 PERMIT AND APPLICATION FEES

(a) The owner or operator of any facility holding a permit shall pay the following permit fees:

ANNUAL PERMIT FEES
(FOR CALENDAR YEAR 1993)

Facility Category	Basic Tonnage Factor	Basic Permit Fee	Nonattainment Area Added Fee
Title V	$14.20	$4900	$2500
Deferred or Synthetic		$1500	
Intermediate		$ 800	
Small		$ 250	
Transportation		$ 0	
General	50% of the otherwise applicable fee		

A facility, other than a Title V facility, which has been in compliance may be eligible for a 25% discount from the annual permit fees as described in Paragraph (c) of Rule .0205 of this Section. Annual permit fees for Title V facilities shall be adjusted for inflation as described in Rule .0204 of this Section. Annual permit fees for Title V facilities consist of the sum of the applicable fee elements.

(b) In addition to the annual permit fee, a permit applicant shall pay a non-refundable permit application fee as follows:

PERMIT APPLICATION FEES
(FOR CALENDAR YEAR 1993)

Facility Category	New or Modification	New or Significant Modification	Minor Modification	Ownership Change

Title V (before Title V Program)	$ 700			$50
Title V (after Title V Program)		$7000	$700	$50
Title V (PSD or NSR/NAA)	$10600			$50
Title V (PSD and NSR/NAA)	$20500			$50
Deferred or Synthetic	$ 400			$50
Intermediate	$ 100			$50
Small	$ 50			$25
Transportation	$ 400			$50
General	50% of the otherwise applicable fee			$25

Permit application fees for Title V facilities shall be adjusted for inflation as described in Rule .0204 of this Section.

(c) If a facility, other than a general facility, belongs to more than one facility category, the fees shall be those of the applicable category with the highest fees. If a permit application belongs to more than one type of application, the fee shall be that of the applicable permit application type with the highest fee.

(d) The tonnage factor fee shall be applicable only to Title V facilities. It shall be computed by multiplying the tonnage factor indicated in the table in Paragraph (a) of this Rule by the facility's combined total actual emissions of all regulated air pollutants, rounded to the nearest ton. The calculation shall not include:

(1) carbon monoxide;

(2) any pollutant that is regulated solely because it is a Class I or II substance listed under Section 602 of the federal Clean Air Act (ozone depletors);

(3) any pollutant that is regulated solely because it is subject to a regulation or standard under Section 112(r) of the federal Clean Air Act (accidental releases); and

(4) the amount of actual emissions of each pollutant that exceeds 4,000 tons per year.

Even though a pollutant may be classified in more than one pollutant category, the amount of pollutant emitted shall be counted only once for tonnage factor fee purposes and in a pollutant category chosen by the permittee. If a facility has more than one permit, the tonnage factor fee for the facility's combined total actual emissions shall be paid only on the permit whose anniversary date first occurs after the date of application of the fees of this Rule.

(e) The nonattainment area added fee shall be applicable only to facilities subject to and located in a nonattainment area defined in 15A NCAC 2D .0531 (Sources in Nonattainment Areas) or 15A NCAC 2D .0900 (Volatile Organic Compounds).

(f) A Title V (PSD or NSR/NAA) facility is a facility whose application is subject to review under 15A NCAC 2D .0530 (Prevention of Significant Deterioration) or 15A NCAC 2D .0531 (Sources in Nonattainment Areas).

(g) A Title V (PSD and NSR/NAA) facility is a facility whose application is subject to review under 15A NCAC 2D .0530 (Prevention of Significant Deterioration) and 15A NCAC 2D .0531 (Sources in Nonattainment Areas).

(h) Minor modification permit applications which are group processed require the payment of only one permit application fee for the group.

(i) No permit application fee is required for renewal of an existing permit, for changes to an unexpired permit when the only reason for the changes is initiated by the Director or the Commission, for a name change with no ownership change, for a change under Rule .0523 (Changes Not Requiring Permit Revisions) of this Section, or for a construction date change, a test date change, a reporting procedure change, or a similar change.

Statutory Authority G.S. 143.215.3(a)(1),(1a), (1b), (1d); 150B-21.6.

.0204 INFLATION ADJUSTMENT

Beginning in 1994, the fees of Rule .0203 of this Section for Title V facilities shall be adjusted as of January 1st of each year for inflation. The inflation adjustment shall be done by the method described in 40 CFR 70.9(b)(2)(iv), except that the method shall be altered to account for the fact that the fees shown in Rule .0203 of this Section are for calendar year 1993.

Statutory Authority G.S. 143.215.3(a)(1),(1a), (1b), (1d); 150B-21.6.

.0205 OTHER ADJUSTMENTS

(a) The total payment for fees required for all permits under G.S. 143-215.3(a)(1b) (facilities other than Title V facilities, or general facilities permitted pursuant to Rule .0509 of this Subchapter) for any single facility shall not exceed seven thousand five hundred dollars ($7,500) per year.

(b) No fees are required to be paid under this Section by a farmer who submits an application or receives a permit that pertains to his farming operations.

(c) If a facility other than a Title V facility has been in full compliance with all applicable administrative, regulatory, and self-monitoring reporting requirements and permit conditions during the previous calendar year, the annual permit fee shall be 25% less than that listed in Rule .0203 of this Section. A facility shall be considered to have been in compliance during the previous calendar year if it has not been sent any Notices of Noncompliance or Notices of Violation during that calendar year.

(d) If a facility changes so that its facility category changes, the annual fee changes with the next annual fee.

(e) A facility that is moved to a new site may receive credit toward new permit fees for any unused portion of an annual fee if the permit for the old site is relinquished.

Statutory Authority G.S. 143.215.3(a)(1),(1a), (1b), (1d); 150B-21.6.

.0206 PAYMENT OF FEES

(a) Payment of fees required under this Section shall be by check or money order made payable to the N.C. Department of Environment, Health and Natural Resources. Annual permit fee payments shall refer to the permit number.

(b) If, within 30 days after being billed, the permit holder fails to pay an annual fee required under this Section, the Director may initiate action to terminate the permit.

(c) A holder of multiple permits may arrange to consolidate the payment of annual fees into one annual payment.

(d) The permit holder shall submit a source reduction and recycling description in accordance with G.S. 143-215.108(g) along with the annual permit fee payment. The description shall include a summary of activities related to source reduction and recycling and of quantities of air emissions reduced and material recycled during the previous year and a summary of plans for further source reduction and recycling.

(e) The payment of the permit application fee required by this Section shall accompany the application and is non-refundable.

(f) The Division shall annually prepare and make publicly available an accounting showing aggregate fee payments collected under this Section from facilities which have obtained or will obtain permits under Section .0500 of this Subchapter except synthetic facilities and showing a summary of reasonable direct and indirect expenditures required to develop and administer the Title V permit program.

Statutory Authority G.S. 143.215.3(a)(1),(1a), (1b), (1d); 143-215.108; 150B-21.6.

.0207 ANNUAL EMISSIONS REPORTING

The owner or operator of:

(1) a Title V facility; or

(2) any other facility, other than a transportation facility, that is in a nonattainment area defined in 15A NCAC 2D .0531 and that has actual emissions of 25 tons per year or more of nitrogen oxides or volatile organic compounds;

shall report by June 30th of each year the actual and potential emissions of each regulated pollutant, each hazardous air pollutant, and each toxic air pollutant that is listed in 15A NCAC 2D .1104, from each source within the facility during the previous calendar year. The report shall be in or on such form as may be established by the Director. This annual reporting requirement shall begin with calendar year 1993 emissions. The accuracy of the report shall be certified by a responsible official of the facility as defined under 40 CFR 70.2. Reporting may be required for other facilities by permit condition or pursuant to 15A NCAC 2D .0202 (Registration of Air Pollution Sources).

Statutory Authority G.S. 143.215.3(a)(1),(1a), (1b), (1d); 143-215.65; 143-215.107; 143B-282;

150B-21.6.

SECTION .0300 - CONSTRUCTION AND OPERATION PERMIT

.0301 APPLICABILITY

(a) Except for the permit exemptions allowed under Rules .0102 and .0302 of this Subchapter, the owner or operator of a new, modified, or existing facility or source shall not begin construction or operation without first obtaining a construction and operation permit in accordance with the standard procedures under Section .0300; however, Title V sources are subject to the Title V procedures under Section .0500 including the acid rain procedures under Section .0400 for Title IV sources.

(b) The owner or operator of a source required to have a permit under this Section may also be subject to the air toxic permit procedures under 15A NCAC 2D .0610.

(c) The owner or operator of a source required to have a permit under this Section shall pay permit fees required under Section .0200 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108.

.0302 ACTIVITIES EXEMPTED FROM PERMIT REQUIREMENTS

(a) The exemptions in this Rule apply only to this Section. They do not apply to Section .0500 (Title V Procedures) of this Subchapter.

(b) If a source is subject to any of the following rules, the source is not exempted from permit requirements, and the exemptions in Paragraph (c) or (d) of this Rule do not apply:

(1) new source performance standards under 15A NCAC 2D .0524, except new residential wood heaters;

(2) national emission standards for hazardous air pollutants under 15A NCAC 2D .0525, except asbestos demolition and renovation activities;

(3) prevention of significant deterioration under 15A NCAC 2D .0530; or

(4) new source review under 15A NCAC 2D .0531 and .0532;

(5) sources of volatile organic compounds subject to the requirements of 15A NCAC 2D .0900 that are located in Mecklenburg and Gaston Counties;

(6) sources required to apply maximum achievable control technology for hazardous air pollutants under 15A NCAC 2D .1109 or 40 CFR Part 63;

(7) sources at facilities subject to 15A NCAC 2D .1100; or

(8) facilities subject to Title V permitting procedures under Section .0500 of this Subchapter.

(c) In addition to the exemptions contained in Rule .0102 of this Section, the following sources are not required to obtain a permit or permit modification under this Section:

(1) any facility without control devices whose actual emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, or carbon monoxide are each less than five tons per year and whose potential emissions of each of these pollutants are less than 100 tons per year;

(2) paint spray booths or other painting or coating operations without control devices located at a facility whose facility-wide actual emissions of:

(A) Volatile organic compounds are less than five tons per year, and

(B) Photochemically reactive solvent emissions under 15A NCAC 2D .0518 are less than 40 pounds per day;

(3) gasoline service stations or gasoline dispensing facilities;

(4) bulk gasoline plants with an average daily throughput of less than 4000 gallons;

(5) perchloroethylene dry cleaners;

(6) fuel combustion equipment firing exclusively kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, gaseous fuel, or a mixture of these fuels with a total heat input rating less than 40 million BTU per hour for which construction, modification, or reconstruction commenced before June 9, 1989;

(7) a source whose emissions are regulated only under Section 112(r) or Title VI of the federal Clean Air Act;

(8) laboratory equipment used exclusively for chemical or physical analysis for research and development; or

(9) emergency use generators and other internal combustion engines, except motor vehicles, that produce no more than:

(A) 210 kilowatts or 300 horsepower for

natural gas-fired engines,

(B) 550 kilowatts or 750 horsepower for liquified petroleum gas-fired engines, or

(C) 150 kilowatts or 275 horsepower for diesel-fired engines.

(d) The owner or operator of any facility or source required to have a permit under this Section may request the Director to exempt the facility or source from the requirement to have a permit. The request shall be in writing. Along with the request, the owner or operator shall submit supporting documentation, including ambient modeling, to show that air quality and emission control standards will not be, nor are likely to be, contravened. If the documentation shows to the satisfaction of the Director that air quality and emission control standards will not be, nor are likely to be, contravened, a permit shall not be required.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108.

.0303 DEFINITIONS

For the purposes of this Section, the following definitions apply:

(1) "New facility" means a facility that is receiving a permit from the Division for construction and operation of a source of an emissions polluting operation that it is not currently permitted.

(2) "Modified facility" means a modification of an existing facility or source and:

(a) The permitted facility or source is being modified in such a manner as to require the Division to reissue the permit, or

(c) A new source is being added that requires the Division to reissue the permit.

For a facility or source for which only name and ownership changes, construction date changes, test date changes, or reporting procedure changes are being made is not considered a modified facility.

(3) "Plans and Specifications" means the completed application and any other documents required to define the operating conditions of the air pollution source.

(4) "Title IV source" means a source that is required to be permitted following the procedures under Section .0400 of this Subchapter.

(5) "Title V source" means a source that is required to be permitted following the procedures under Section .0500 of this Subchapter.

Statutory Authority G.S. 143-213; 143-215.3(a)(1).

.0304 APPLICATIONS

(a) Permit, permit modification, or permit renewal applications may be obtained and shall be filed in writing in accordance with Rule .0104 of this Subchapter.

(b) Along with filing a complete application form, the applicant shall also file the following:

(1) for a new facility or an expansion of existing facility, a consistency determination in accordance with G.S. 143-215.108(f) that:

(A) bears the date of receipt entered by the clerk of the local government, or

(B) consists of a letter from the local government indicating that all zoning or subdivision ordinances are met by the facility;

(2) for a new facility or modification of an existing facility, a source reduction and recycling description in accordance with G.S. 143-215.108(g); and

(3) if required by the Director, information showing that:

(A) The applicant is financially qualified to carry out the permitted activities, or

(B) The applicant has substantially complied with the air quality and emissions standards applicable to the permitted activities.

(c) Applicants shall file air permit applications at least 90 days before projected date of construction of a new source or modification of an existing source. For sources subject to the requirements of 15A NCAC 2D .0530 (prevention of significant deterioration) or .0531 (new source review for sources in nonattainment areas), applicants shall file air permit applications at least 180 days before projected construction date.

(d) If no modification has been made to the originally permitted source, application for permit renewal or ownership change may be made by letter to the Director at the address specified in Rule .0104 of this Subchapter. The renewal or ownership change letter must state that there have been no changes in the permitted facility since the permit was last issued. However, the Director may require the applicant for ownership change to submit additional information showing that:

(1) The applicant is financially qualified to carry out the permitted activities, or

(2) The applicant has substantially complied with the air quality and emissions standards applicable to the permitted activity.

(e) Applicants shall file applications for renewals such that they are received by the Division at least 90 days before expiration of the permit.

(f) The permittee shall file requests for permit name or ownership changes as soon as the permittee is aware of the imminent name or ownership change.

(g) The applicant shall submit copies of the application package as follows:

(1) six copies for sources subject to the requirements of 15A NCAC 2D .0530, .0531, or .1200; or

(2) three copies for sources not subject to the requirements of 15A NCAC 2D .0530, .0531, or .1200.

The Director may at any time during the application process request additional copies of the complete application package from the applicant.

(h) The applicant shall submit the same number of copies of additional information as required for the application package.

(i) Whenever the information provided on the permit application forms does not adequately describe the source and its air cleaning device, the Director may request that the applicant provide any other information that the Director considers necessary to evaluate the source and its air cleaning device. Before acting on any permit application, the Director may request any information from an applicant and conduct any inquiry or investigation that he considers necessary to determine compliance with applicable standards.

(j) Permit applications submitted pursuant to this Rule shall be signed as follows:

(1) for corporations, by a principal executive officer of at least the level of vice-president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the emissions described in the permit application form originates;

(2) for partnership or limited partnership, by a general partner;

(3) for a sole proprietorship, by the proprietor;

(4) for municipal, state, federal, or other public entity, by a principal executive officer, ranking elected official, or other duly authorized employee.

(k) A non-refundable permit application processing fee shall accompany each application. The permit application processing fees are defined in Section .0200 of this Subchapter. Each permit or renewal application is incomplete until the permit application processing fee is received.

(l) The applicant shall keep on file one complete copy of the application package and any information submitted in support of the application package.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108.

.0305 APPLICATION SUBMITTAL CONTENT

If an applicant does not submit, at a minimum, the following information with his application package, the application package shall be returned:

(1) for new facilities and modified facilities:

(a) an application fee as required under Section .0200 of this Subchapter,

(b) a consistency determination as required under Rule .0304(b)(1) of this Section,

(c) a financial qualification or substantial compliance statement if required, and

(d) applications as required under Rule .0304(a) and (g) of this Section and signed as required by Rule .0304(j) of this Section;

(2) for renewals: two copies of applications as required under Rule .0304(a) and (d) of this Section and signed as required by Rule .0304(j) of this Section;

(3) for a name change: two copies of a letter signed by the appropriate individual listed in Rule .0304(j) indicating the current facility name, the date on which the name change shall occur, and the new facility name;

(4) for an ownership change: an application fee as required under Section .0200 of this Subchapter and:

(a) two copies of a letter sent by each the seller and the buyer indicating the change, or

(b) two copies of a letter sent by either bearing the signature of both the seller and buyer, and

containing a written agreement with a specific date for the transfer of permit responsibility, coverage, and liability between the current and new permittee; and

(5) for corrections of typographical errors; changes name, address, or telephone

number of any individual identified in the permit; changes in test dates or construction dates; or similar minor changes: two copies of a letter signed by the appropriate individual listed in Rule .0304(j) of this Section describing the proposed change and explaining the need for the proposed change.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108.

.0306 PERMITS REQUIRING PUBLIC PARTICIPATION

(a) The Director shall provide for public notice for comments with an opportunity to request a public hearing on draft permits for the following:

(1) any source that may be designated by the Director based on significant public interest;

(2) a source to which 15A NCAC 2D .0530 or .0531 applies;

(3) a source whose emission limitation is based on a good engineering practice stack height that exceeds the height defined in 15A NCAC 2D .0533(a)(4)(A), (B), or (C);

(4) a source required to have controls more stringent than the applicable emission standards in Section 15A NCAC 2D .0500 in accordance with 15A NCAC 2D .0501 when necessary to comply with an ambient air quality standard under 15A NCAC 2D .0400;

(5) any physical or operational limitation on the capacity of the source to emit a pollutant, including air cleaning device and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, when such a limitation is necessary to avoid the applicability of rules in 15A NCAC 2D .0900;

(6) alternative controls different than the applicable emission standards in 15A NCAC 2D .0900 in accordance with 15A NCAC 2D .0952;

(7) an alternate compliance schedule promulgated in accordance with 15A NCAC 2D .0910;

(8) a limitation on the quantity of solvent-borne ink that may be used by a printing unit or printing system in accordance with 15A NCAC 2D .0936;

(9) an allowance of a particulate emission rate of 0.08 grains per dry standard cubic foot for an incinerator constructed before July 1, 1987, in accordance with 15A NCAC 2D .1205(b)(2);

(10) an alternative mix of controls under 15A NCAC 2D .0501(f); or

(11) a source that is subject to the requirements of 15A NCAC 2D .1109 because of 15A NCAC 2D .1109(e).

(b) If EPA requires the State to submit a permit as part of the North Carolina State Implementation Plan for Air Quality (SIP) and if the Commission approves a permit containing any of the conditions described in Paragraph (a) of this Rule as a part of the SIP, the Director shall submit the permit to the EPA on behalf of the Commission for inclusion as part of the federally approved SIP.

Statutory Authority G.S. 143-215.3(a)(1), (3); 143-214(b); 143-215.108.

.0307 PUBLIC PARTICIPATION PROCEDURES

(a) This Rule does not apply to sources subject to the requirements of 15A NCAC 2D .0530 or .0531 or Appendix S or 40 CFR Part 51. For sources subject to the requirements of 15A NCAC 2D .0530 or .0531 or Appendix S of 40 CFR Part 51, the procedures in procedures in 15A NCAC 2D .0530 or .0531 or Appendix S of 40 CFR Part 51 shall be followed, respectively.

(b) The public notice shall be given by publication in a newspaper of general circulation in the area where the facility is located and shall be mailed to persons who are on the Division's mailing list for air quality permit notices.

(c) The public notice shall identify:

(1) the affected facility;

(2) the name and address of the permittee;

(3) the name and address of the person to whom to send comments and requests for public hearing;

(4) the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft permit, the application, compliance plan, monitoring and compliance reports, all other relevant supporting materials, and all other materials available to Division that are relevant to the permit decision;

(5) the activity or activities involved in the permit action;

(6) any emissions change involved in any permit modification;

(7) a brief description of the public comment procedures;

(8) the procedures to follow to request a public hearing unless a public hearing has already been scheduled; and

(9) the time and place of any hearing that has already been scheduled.

(d) The notice shall allow 30 days for public comments.

(e) If the Director finds that a public hearing is in the best interest of the public, the Director shall require a public hearing to be held on a draft permit. Notice of a public hearing shall be given at least 30 days before the public hearing.

(f) The Director shall make available for public inspection in at least one location in the region affected, the information submitted by the permit applicant and the Division's analysis of that application.

(g) Persons who desire to be placed on the Division's mailing list for air quality permit notices shall send their request to the Director, Division of Environmental Management, P.O. Box 29535, Raleigh, North Carolina 27626-0535 and shall pay an annual fee of thirty dollars ($30.00).

(h) Any persons requesting copies of material identified in Subparagraph (b)(4) of this Rule shall pay ten cents ($0.10) a page for each page copied. Confidential material shall be handled in accordance with Rule .0107 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1), (3); 143-215.4(b); 143-215.108.

.0308 FINAL ACTION ON PERMIT APPLICATIONS

(a) The Director may:

(1) issue a permit, permit modification, or a renewal containing the conditions necessary to carry out the purposes of G.S. Chapter 143, Article 21B;

(2) rescind a permit upon request by the permittee;

(3) deny a permit application when necessary to carry out the purposes of G.S. Chapter 143, Article 21B.

(b) Any person whose application for a permit, permit modification, or renewal is denied or is granted subject to conditions which are unacceptable to him shall have the right to appeal the Director's decision under Article 3 of G.S. 150B. The person shall have 30 days following the notice of the Director's decision on the application or permit in which to appeal the Director's decision. The permit becomes final if the applicant does not contest the permit within this 30-day period.

(c) The Director shall issue or renew a permit for a period of time that the Director considers reasonable, but such period shall not exceed five years.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108.

.0309 TERMINATION, MODIFICATION AND REVOCATION OF PERMITS

(a) The Director may terminate, modify, or revoke and reissue any permit issued under this Section if:

(1) The information contained in the application or presented in support thereof is determined to be incorrect;

(2) The conditions under which the permit or permit renewal was granted have changed;

(3) Violations of conditions contained in the permit have occurred;

(4) The permit holder fails to pay the fee required under Section .0200 of this Subchapter within 30 days after being billed;

(5) The permittee refuses to allow the Director or his authorized representative upon presentation of credentials:

(A) to enter the permittee's premises in which a source of emissions is located or in which any records are required to be kept under terms and conditions of the permit;

(B) to have access to any copy or records required to be kept under terms and conditions of the permit;

(C) to inspect any source of emissions, control equipment, and any monitoring equipment or method required in the permit; or

(D) to sample any emission source at the facility;

(6) The Director finds that termination, modification, or revocation and reissuance of a permit is necessary to carry out the purpose of G.S. Chapter 143, Article 21B.

(b) The operation of a facility or source after its permit has been revoked is a violation of this Section and G.S. 143-215.108.

(c) The permittee may request modifications to his permit.

(d) When a permit is modified, the proceedings

shall affect only those parts of the permit that are being modified.

(e) Any person whose permit is terminated, modified, or revoked and reissued shall have the right to appeal the Director's decision under Article 3 of G.S. 150B. The person shall have 30 days following the notice of the Director's decision on the termination, modification, or revocation and reissuance in which to appeal the Director's decision.

Statutory Authority G.S. 143-215.3(a)(1), (1a),(1b); 143-215.108; 143-215.114.

.0310 PERMITTING OF NUMEROUS SIMILAR FACILITIES

(a) The Director may issue a permit to cover numerous similar facilities or sources.

(b) The Director shall not issue a permit under this Rule unless the following conditions are meet:

(1) No facility covered under the permit typically has actual emissions of more than 50 tons per year of particulates, sulfur dioxide, nitrogen oxides, or volatile organic compounds or five tons per year of lead;

(2) There is no unique difference that would require special permit conditions for any individual facility; and

(3) No unique analysis is required for any facility covered under the permit.

(c) A permit issued under this Rule shall identify criteria by which facilities or sources may qualify for the permit. The Director shall grant the terms and conditions of the permit to facilities or sources that qualify.

(d) The facility or source shall be subject to enforcement action for operating without a permit if the facility or source is later determined not to qualify for the terms and conditions of the permit issued under this Rule.

(e) The owner or operator of a facility or source that qualifies for a permit issued under this Rule shall apply for coverage under the terms of the permit issued under this Rule or shall apply for a standard permit under this Section.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108.

.0311 PERMITTING OF FACILITIES AT MULTIPLE TEMPORARY SITES

(a) The Director may issue a single permit authorizing emissions from a facility or source at multiple temporary sites.

(b) In order for a facility or source to qualify for a multiple temporary sites under this Rule, the operation must involve at least one change of site during the term of the permit.

(c) Permits for facilities at multiple temporary sites shall include:

(1) the identification of each site;

(2) the conditions that will assure compliance with all applicable requirements at all approved sites;

(3) a requirement that the permittee notify the Division at least 10 days in advance of each change of site; and

(4) the conditions that assure compliance with all other provisions of this Section.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108.

SECTION .0400 - ACID RAIN PROCEDURES

.0401 APPLICABILITY

(a) The procedures and requirements under this Section do not apply until the EPA approves this Section and Section .0500 of this Subchapter.

(b) Each of the following units shall be an affected unit, and any facility that includes such a unit shall be an affected facility, subject to the requirements of the Acid Rain Program:

(1) A unit listed in 40 CFR Part 73, Subpart B, Table 1.

(2) A unit that is identified as qualifying for an allowance allocation under Sections 403 and 405 of the federal Clean Air Act and any other existing utility unit, except a unit under Paragraph (c) of this Rule.

(3) A utility unit, except a unit under Paragraph (c) of this Rule, that:

(A) is a new unit; or

(B) did not serve a generator with a nameplate capacity greater than 25 MWe before November 15, 1990, but serves such a generator on or after November 15, 1990.

(c) The following types of units are not affected units subject to the requirements of the Acid Rain Program:

(1) A simple combustion turbine that commenced operation before November 15, 1990.

(2) Any unit that commenced commercial operation before November 15, 1990, and that did not, as of November 15,

1990, and does not currently, serve a generator with a nameplate capacity of greater than 25 MWe.

(3) Any unit that, during 1985, did not serve a generator that produced electricity for sale and that did not, as of November 15, 1990, and does not currently, serve a generator that produces electricity for sale.

(4) A non-utility unit.

(5) Any other units under CFR 40 Part 72.6.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0402 DEFINITIONS

The terms used in these Rules shall have the meanings set forth in the federal Clean Air Act and in this Subchapter as follows:

(1) "Acid rain emissions reduction requirement" means a requirement under the Acid Rain Program to reduce the emissions of sulfur dioxide or nitrogen oxides from a unit to a specified level or by a specified percentage.

(2) "Acid Rain Program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with Title IV.

(3) "Act" means the Clean Air Act, 42 U.S.C. 7401, et. seq. as amended by Public Law No. 101-549 (November 15, 1990).

(4) "Administrator" means the administrator of the United States Environmental Protection Agency (EPA) or the Administrators's duly authorized representative.

(5) "Affected Facility" means a facility that includes one or more affected units.

(6) "Affected Unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation.

(7) "Commenced commercial operation" means to have begun to generate electricity for sale, including the sale of test generation.

(8) "Designated representative" means a responsible natural person authorized by the owners and operators of an affected facility, and of all the affected units at the facility, as evidenced by a certificate of representation submitted in accordance with CFR 40 Part 70, Subpart B, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the Acid Rain Program. Whenever the term "responsible official" is used in this Subchapter it shall be deemed to refer to the "designated representative" with regard to all matters under the Acid Rain Program.

(9) "Draft permit" means the version of the permit, or the acid rain portion of an operating permit, that a permitting authority offers for public comment.

(10) "Facility" means any contiguous group of one or more sources.

(11) "Generator" means any device that produces electricity and was or would have been required to be reported as a generating unit pursuant to the United States Department of Energy Form 960 (1990 edition).

(12) "mmBTU" means millions of British Thermal Units.

(13) "MWe" means megawatts of electricity.

(14) "NADB" means the National Allowance Data Base.

(15) "Nameplate capacity" means the maximum electrical generating output (expressed in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as listed in the NADB under the data field "NAMECAP" if the generator is listed in the NADB or as measured in accordance with the United States Department of Energy standards if the generator is not listed in the NADB.

(16) "Owner or operator" means any person who operates, controls, or supervises an affected unit or an affected facility and shall include, but not be limited to, any holding company, utility system, or plant manager of an affected unit or affected facility.

(17) "Permit" as it is used in this Section means the legally binding written document, or portion of such document, issued by the Director including any permit revisions, specifying the Acid Rain Program requirements applicable to an affected facility, to each affected unit at an affected facility, and to the owners and operators and the designated

representative of the affected unit or the affected facility. In addition, the permit satisfies the procedures under Section .0500 of this Subchapter.

(18) "Permit revision" means a permit modification, fast track modification, administrative permit amendment, or automatic permit amendment, as provided in 40 CFR Part 72, Subpart H.

(19) "Permitting authority" means either (i) the Administrator or (ii) the Director.

(20) "Phase I utility" refers to any of 110 utility plants identified by the EPA and listed in Section 404, Table A of the Act. Each unit has a nameplate capacity of greater than 100 MWe and emits greater than 2.5 lbs/mmBTU of sulfur dioxide.

(21) "Phase II utility" refers to the inclusion of additional utilities with capacities greater than 25 MWe to the Acid Rain Program.

(22) "Secretary of Energy" refers to the Secretary of the United States Department of Energy or the Secretary's duly authorized representative.

(23) "Simple Combustion Turbine" means a unit that is a rotary engine driven by a gas under pressure that is created by the combustion of any fuel. This term includes combined-cycle units without auxiliary firing but excludes such units with auxiliary firing.

(24) "Source" means any governmental, institutional, commercial or industrial structure, installation, plant or building that emits or has the potential to emit any regulated air pollutant under the Act.

(25) "Unit" means a fossil fuel-fired combustion device.

(26) "Utility" means any person that sells electricity.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0403 NEW UNITS EXEMPTION

(a) Applicability. This Rule applies to any new utility unit that serves one or more generators with total nameplate capacity of 25 MWe or less and burns only fuels with a sulfur content of 0.05 percent or less by weight, as determined for a sample of each fuel delivery using the methods specified in 40 CFR 72.7(d)2.

(b) Exemption: The designated representative, authorized in accordance with 40 CFR 72.20, of a facility that includes a unit under Paragraph (a) of this Rule may petition the Director for a written exemption for the unit from certain requirements of the Acid Rain Program in accordance with 40 CFR 72.7.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0404 RETIRED UNITS EXEMPTION

(a) Applicability. This Rule applies to any affected unit that is retired prior to the issuance (including renewal) of a permit for the unit as a final agency action.

(b) Exemption. The designated representative, authorized in accordance with 40 CFR Part 72, Subpart B, of a facility that includes a unit under Paragraph (a) of this Rule may petition the Director for a written exemption, or to renew a written exemption, for the unit from certain requirements of 40 CFR Part 72 in accordance with 40 CFR 72.8.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0405 REQUIREMENT TO APPLY

(a) Duty to apply. The designated representative of any facility with an affected unit shall submit a complete permit application by the applicable deadline in Paragraphs (b) and (c) of this Rule. The Owner or Operator shall not operate the facility without a permit that states its Acid Rain Program requirements.

(b) Deadlines:

(1) Phase II. For any facility with an existing unit under Subparagraphs (b)(1) or (2) of Rule .0401 of this Section, the designated representative shall submit a complete permit application governing such unit during Phase II to the Director on or before January 1, 1996.

(2) New Units.

(A) For any facility with a new unit under Part (b)(3)(A) of Rule .0401, the designated representative shall submit a complete permit application governing such unit to the Director at least 24 months before the later of January 1, 2000, or the date on which the unit commences operation.

(B) For any facility with a unit under Part (b)(3)(B) of Rule .0401, the designated representative shall submit

a complete permit application governing such unit to the Director at least 24 months before the later of January 1, 2000, or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 MWe.

(3) Acid Rain Compliance Option Deadlines. The deadlines for applying for approval of any acid rain compliance options shall be the deadlines specified in the relevant section of 40 CFR Part 72, Subpart D and in Section 407 of the federal Clean Air Act and regulations implementing section 407 of the federal Clean Air Act.

(c) Duty to Reapply. The designated representative shall submit a complete permit application for each facility with an affected unit at least nine months prior to the expiration of an existing permit governing the unit during Phase II.

(d) Four copies of all permit applications shall be submitted to the Director.

(e) Permit Issuance Deadline.

(1) On or before December 31, 1997, the Director shall issue a permit for Phase II to each affected facility in the State as set forth in 40 CFR 72.73(a); provided that the designated representative for the facility submitted a timely and complete permit application. Each permit issued in accordance with this Rule shall have a term of five years commencing on its effective date. Each permit shall take effect by the later of January 1, 2000, or, where the permit governs a unit under Subparagraph (b)(3) of Rule .0401 of this Section, the deadline for monitor certification under 40 CFR Part 75.

(2) Nitrogen Oxides. Not later than January 1, 1999, the Director shall reopen the permit to add the Acid Rain Program nitrogen oxides requirements. Such reopening shall not affect the term of the acid rain portion of a construction and operation permit.

(3) Grandfathering of Phase II Units. Pursuant to the Federal Register, vol. 57, no. 228, p. 55634, units that meet the following Phase I nitrogen oxides emission limitations before 1997:

(A) 0.45 lb/mmBtu for tangentially fired boilers;

(B) 0.50 lb/mmBtu for dry bottom wall-fired boilers;

shall be exempted from any revision in emission limitations pursuant to Section 407(b)(2).

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0406 REQUIREMENTS FOR PERMIT APPLICATIONS

A complete permit application shall contain the following elements in a format to be specified by the Administrator:

(1) identification of the affected facility for which the permit application is submitted;

(2) identification of each unit at the facility for which the permit application is submitted;

(3) a complete compliance plan for each unit, in accordance with 40 CFR Part 72, Subpart D;

(4) the standard requirements under 40 CFR Part 72.9; and

(5) if the permit application is for Phase II and the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline for monitor certification.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0407 PERMIT APPLICATION SHIELD AND BINDING EFFECT OF PERMIT APPLICATION

(a) Once a designated representative submits a timely and complete permit application, the owner or operator shall be deemed in compliance with the requirement to have a permit under 40 CFR 72.9(a) and Paragraph (a) of Rule .0405 of this Section; provided that any delay in issuing a permit is not caused by the failure of the designated representative to submit in a complete and timely fashion supplemental information, as required by the Director, necessary to issue a permit.

(b) Prior to the earlier of the date on which a permit is issued subject to administrative appeal or judicial review, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete permit application shall be deemed to be operating in compliance with the Acid Rain Program and this

Section.

(c) A complete permit application shall be binding on the owners and operators of the affected facility and the affected units covered by the permit application and shall be enforceable as a permit from the date of submission of the complete permit application until the final issuance or denial of a permit covering the units and subject to administrative appeal or judicial review.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0408 COMPLIANCE PLANS

For each affected unit included in a permit application, a complete compliance plan shall follow the requirements under 40 CFR 72.40 where "permitting authority" is replaced with "Director."

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0409 PHASE II REPOWERING EXTENSIONS

The procedures required for a repowering extension shall follow the requirements contained in 40 CFR 72.44 where "permitting authority" is replaced with "Director".

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0410 PERMIT CONTENTS

Each permit (including any draft or proposed permit) shall contain the following elements:

(1) all elements required for a complete permit application under Rule .0406, as approved or modified by the Director;

(2) the applicable acid rain emissions limitation for sulfur dioxide; and

(3) the applicable acid rain emissions limitation for nitrogen oxides.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0411 STANDARD REQUIREMENTS

(a) The standard requirements set forth in Paragraphs (b) through (i) of this Rule shall be binding on all owners and operators (including the designated representative) of the affected facility and affected units at the facility.

(b) Permit Requirements. The owners or operators of each affected facility and each affected unit at the facility shall:

(1) submit a complete permit application (including a compliance plan) under this Section in accordance with the deadlines specified in Rule .0405;

(2) submit in a timely manner any supplemental information that the Director determines is necessary in order to review a permit application and issue or deny a permit;

(3) operate the unit in compliance with a complete permit application or a superseding permit issued by the Director; and

(4) have a permit.

(c) Monitoring Requirements.

(1) The owners and operators of each facility and each affected unit at the facility shall comply with all applicable monitoring requirements of 40 CFR Part 75 and Section 407 of the federal Clean Air Act and rules implementing Section 407 of the federal Clean Air Act.

(2) The emissions measurements recorded and reported in accordance with 40 CFR Part 75 and Section 407 of the federal Clean Air Act and rules implementing Section 407 of the federal Clean Air Act shall be used to determine compliance by the unit with the acid rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides requirements under the Acid Rain Program.

(3) The requirements of 40 CFR Part 75 and regulations implementing Section 407 of the federal Clean Air Act shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the Act and other provisions of the operating permit for the facility.

(d) Sulfur Dioxide Requirements.

(1) The owners and operators of each facility and each affected unit at the facility shall:

(A) hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur

dioxide for the previous calendar year from the unit; and

(B) comply with the applicable acid rain emissions limitations for sulfur dioxide.

(2) Each ton of sulfur dioxide emitted in excess of the acid rain emissions limitations for sulfur dioxide shall constitute a separate violation of the federal Clean Air Act.

(3) An affected unit shall be subject to the requirements under Subparagraph (d)(1) of this Rule as follows:

(A) starting January 1, 2000, an affected unit under Subparagraph (b)(1) or (2) of Rule .0401;

(B) starting on the later of January 1, 2000, or the deadline for monitor certification under 40 CFR Part 75, an affected unit under Subparagraph (b)(3) of Rule .0401.

(4) Allowances shall be held in, deducted from, or transferred among Allowance Tracking System accounts in accordance with the Acid Rain Program.

(5) An allowance shall not be deducted, in order to comply with the requirements under Part (d)(1)(A) of this Rule, prior to the calendar year for which the allowance was allocated.

(6) An allowance allocated by the Administrator under the Acid Rain Program is a limited authorization to emit sulfur dioxide in accordance with the Acid Rain Program. No provision of the Acid Rain Program, the permit application, the permit, or the permit under 40 CFR Part 72.7 and Part 72.8 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(7) An allowance allocated by the Administrator under the Acid Rain Program does not constitute a property right.

(e) Nitrogen Oxides Requirements. The owners and operators of the facility and each affected unit at the facility shall comply with the applicable acid rain emissions limitation established by rules implementing Section 407 of the federal Clean Air Act, as modified by a permit application and a permit in accordance with the requirements of the Acid Rain Program.

(f) Excess Emissions Requirements. The owners and operators of an affected unit that has excess emissions for sulfur dioxide or nitrogen oxides in any calendar year shall:

(1) pay without demand the penalty required, and pay upon demand the interest on that penalty, as required by 40 CFR Part 77.

(2) submit a proposed offset plan and comply with the terms of an approved offset plan, as required by 40 CFR Part 77.

(g) Recordkeeping and Reporting Requirements.

(1) Unless otherwise provided, the owners and operators of the facility and each affected unit at the facility shall keep on site at the facility each of the following documents for a period of five years from the date the document is created; this period may be extended for cause, at any time prior to the end of five years, in writing by the Administrator or Director:

(A) the certificate of representation for the designated representative for the facility and each affected unit at the facility and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with 40 CFR Part 72.24; provided that the certificates and documents shall be retained on site at the facility beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.

(B) all emissions monitoring information, in accordance with 40 CFR Part 75.50(a).

(C) copies of all reports, compliance certifications, and other submissions and all records under the Acid Rain Program.

(D) copies of all documents used to complete a permit application and any other submission under the Acid Rain Program or to demonstrate compliance with the requirements of the Acid Rain Program.

(2) The designated representative shall submit the reports and compliance certifications required under the Acid Rain Program, including those under 40

CFR Part 72, Subpart I, and 40 CFR Part 75.

(h) Liability.

(1) Any person who knowingly violates any requirement or prohibition of the Acid Rain Program, a complete permit application, a permit, or a written exemption under Rule .0403 or of .0404 of this Section, including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement pursuant to G.S. 143-215.114A.

(2) Any person who knowingly makes a false, material statement in any record, submission, or report under the Acid Rain Program shall be subject to criminal enforcement pursuant to G.S. 143-215.114A.

(3) No permit revision shall excuse any violation of the requirements of the Acid Rain Program that occurs prior to the date that the revision takes effect.

(4) Each affected facility and each affected unit shall meet the requirements of the Acid Rain Program.

(5) Any provision of the Acid Rain Program that applies to an affected facility shall also apply to the owners and operators (including the designated representative) of such facility and of the affected units at the facility.

(6) Any provision of the Acid Rain Program that applies to an affected unit shall also apply to the owners and operators (including the designated representative) of such unit. Except as provided under Rule .0409 of this Section, and Sections 407 of the federal Clean Air Act, and rules implementing Section 407 of the federal Clean Air Act, and except with regard to the requirements applicable to units with a common stack under 40 CFR Part 75 (including 40 CFR Parts 75.16, 75.17, and 75.18), the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators and that is at the same facility unless they are owners or operators of that facility.

(7) Any violation of a provision of 40 CFR Parts 72, 73, 75, 77, and 78, or rules implementing Sections 407 of the federal Clean Air Act by an affected unit, or by an owner or operator or designated representative of such unit, shall be a separate violation.

(i) Effect on Other Authorities. No provision of the Acid Rain Program, a permit application, a permit, or a written exemption under Rule .0403 and .0404 of this Section shall be construed as:

(1) except as expressly provided in Title IV, exempting or excluding the owners and operators of an affected facility or affected unit from compliance with any other provision of the federal Clean Air Act, including the provisions of Title I of the federal Clean Air Act relating to applicable national ambient air quality standards or state implementation plans.

(2) limiting the number of allowances a unit can hold; provided, that the number of allowances held by the unit shall not affect the facility's obligation to comply with any other provisions of the federal Clean Air Act or Subchapter 2D of Title 15A.

(3) requiring a change of any kind in any State law regulating electric utility rates and charges, affecting any State law regarding such State regulation, or limiting such State rule, including any prudence review requirements under such State law.

(4) modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act.

(5) interfering with or impairing any program for competitive bidding for power supply in a State in which such program is established.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.65; 143-215.66; 143-215.108.

.0412 PERMIT SHIELD

Each affected unit operated in accordance with the permit that governs the unit and that was issued in compliance with Title IV, as provided in this Part, 40 CFR Parts 73, 75, 77, and 78, and the rules implementing Sections 407 of the federal Clean Air Act, shall be deemed to be operating in compliance with the Acid Rain Program, except as provided in Subparagraph (h)(6) of Rule .0411 of this Section.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0413 PERMIT REVISIONS GENERALLY

(a) The permit revision procedures shall govern revisions to any acid rain portion of any construction and operation permit.

(b) The permit revision procedures shall supersede the permit revision procedures specified in Section .0500 of this Subchapter with regard to revision of any Acid Rain Program permit provision.

(c) A permit revision may be submitted for approval at any time. No permit revision shall affect the term of the permit to be revised. No permit revision shall excuse any violation of an Acid Rain Program requirement that occurred prior to the effective date of the revision.

(d) Except for minor permit modifications or administrative amendments, the terms of the permit shall apply while the permit revision is pending.

(e) Any determination by the Director or a State court modifying or voiding any permit provision shall be subject to review by the Administrator in accordance with 40 CFR 70.8(c), unless the determination or interpretation is an administrative amendment approved in accordance with Rule .0416 of this Section.

(f) The standard requirements of 40 CFR Part 72.9 shall not be modified or voided by a permit revision.

(g) Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under Rule .0409 of this Section and Section 407 of the federal Clean Air Act and rules implementing Section 407 of the federal Clean Air Act.

(h) For permit revisions not described in Rules .0414 and .0415 of this Section, the Director may, at his discretion, determine which of these Rules is applicable.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0414 PERMIT MODIFICATIONS

(a) The following permit revisions shall follow the permit modification procedures:

(1) relaxation of an excess emission offset requirement after approval of the offset plan by the Administrator,

(2) incorporation of a final nitrogen oxides alternative emission limitation following a demonstration period, or

(3) determination of whether efforts to design, construct, and test repowering technology under a repowering extension plan were in good faith and whether such repowering technology was properly constructed and tested under 40 CFR 72.44(g)(1)(i) and (2).

(b) The following permit revisions shall follow either the permit modification procedures or the fast-track modification procedures under Rule .0415 of this Section:

(1) incorporation of a compliance option that the designated representative did not submit for approval and comment during the permit issuance process;

(2) addition of a nitrogen oxides alternative emissions limitation demonstration period or a nitrogen oxides averaging plan to a permit; or

(3) changes in a repowering plan, nitrogen oxides averaging plan, nitrogen oxides alternative emissions limitation demonstration period, or nitrogen oxides compliance deadline extension.

(c) Permit modifications shall follow the requirements of Rules .0410 and .0412 of this Section and Section .0500 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0415 FAST-TRACK MODIFICATIONS

All fast-track modifications applicable to sources subject to the acid rain portion of this Section shall follow the procedures given in 40 CFR 72.80 where "permitting authority" should be replaced with "Director".

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0416 ADMINISTRATIVE PERMIT AMENDMENT

(a) The following revisions to the acid rain portion of the permit shall follow the administrative permit amendment procedures are:

(1) activation of a compliance option conditionally approved by the Director, provided that all requirements for activation under 40 CFR Part 72, Subpart D, are met;

(2) changes in the designated representative or alternative designated representative, provided that a new certificate of representation is submitted;
(3) correction of typographical errors;
(4) changes in names, addresses, or telephone or facsimile numbers;
(5) changes in the owners or operators, provided that a new certificate of representation is submitted within 30 days;
(6) termination of a compliance option in the permit, provided that this procedure shall not be used to terminate a repowering plan after December 31, 1999.

(b) Administrative amendments shall follow the procedures set forth under Section .0500 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0417 AUTOMATIC PERMIT AMENDMENT

The following permit revisions shall be deemed to amend automatically, and become a part of, the affected unit's permit by operation of law without any further review:

(1) upon recordation by the Administrator under 40 CFR Part 73 all allowance allocations to, transfers to, and deductions from an affected unit's Allowance Tracking System account; and
(2) incorporation of an offset plan that has been approved by the Administrator under 40 CFR Part 77.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0418 PERMIT REOPENINGS

(a) As provided in Section .0500 of this Subchapter, the Director shall reopen a permit for cause, including whenever additional requirements become applicable to any affected unit governed by the permit.

(b) Upon reopening a permit for cause, the Director shall issue a draft permit changing the provisions, or adding the requirements, for which the reopening was necessary.

(c) As necessary, the Director shall reopen a permit to incorporate nitrogen oxides requirements, consistent with Section 407 of the federal Clean Air Act and rules implementing Section 407 of the federal Clean Air Act.

(d) Any reopening of a permit shall not affect the term of the permit.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

SECTION .0500 - TITLE V PROCEDURES

.0501 PURPOSE OF SECTION AND REQUIREMENT FOR A PERMIT

(a) The purpose of this Section is to establish an air quality permitting program as required under Title V and 40 CFR Part 70.

(b) The procedures and requirements under this Section do not apply until EPA approves this Section.

(c) With the exception in Paragraph (d) of this Rule, the owner or operator of an existing facility, new facility, or modification of an existing facility (except for minor modifications under Rule .0515 of this Section), including significant modifications that would not contravene or conflict with a condition in the existing permit, subject to the requirements of this Section shall not begin construction without first obtaining:

(1) a construction and operation permit following the procedures under this Section (except for Rule .0504), or
(2) a construction and operation permit following the procedures under Rule .0504 and filing an application within 12 months after commencing operation to modify the construction and operation permit to meet the requirements of this Section.

(d) If the permittee proposes to make a significant modification under Rule .0516 of this Section that would contravene or conflict with a condition in the existing permit, he shall not begin construction or make the modification until he has obtained:

(1) a construction and operation permit following the procedures under this Section (except for Rule .0504 of this Section); or
(2) a construction and operation permit following the procedures under Rule .0504 of this Section and, before beginning operation, files an application and obtains a permit modifying the construction and operation permit to meet the requirements of this Section (except for Rule .0504 of this Section).

(e) All facilities subject to this Section must have a permit to operate that assures compliance

with 40 CFR Part 70 and all applicable requirements.

(f) Except as allowed under Rule .0515 (minor modifications) of this Section, no facility subject to the requirements of this Section may operate after the time that it is required to submit a timely and complete application under this Section except in compliance with a permit issued under this Section. This Paragraph does not apply to initial submittals under Rule .0506 of this Section or to permit renewals under Rule .0513 of this Section.

(g) If the conditions of Rule .0512(b) (application shield) of this Section are met, the facility's failure to have a permit under this Section shall not be a violation.

(h) The owner or operator of a facility or source subject to the requirements of this Section may also be subject to the toxic air pollutant procedures under 15A NCAC 2H .0610.

(i) The owner or operator of an affected unit subject to the acid rain program requirements of Title IV is also subject to the procedures under Section .0400 of this Subchapter.

(j) The owner or operator of a facility subject to the requirements of this Section shall pay permit fees in accordance with the requirements of Section .0200 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

.0502 APPLICABILITY

(a) Except as provided in Paragraph (b) of this Rule, the following facilities are required to obtain a permit under this Section:

(1) major facilities;

(2) facilities with a source subject to 15A NCAC 2D .0524 or 40 CFR Part 60, except new residential wood heaters;

(3) facilities with a source subject to 15A NCAC 2D .0525 or 40 CFR Part 61, except asbestos demolition and renovation activities;

(4) facilities with a source subject to 40 CFR Part 63;

(5) facilities to which 15A NCAC 2D .0517(2), .0528, .0529, or .0534 applies; or

(6) facilities with a source subject to Title IV or 40 CFR Part 72.

(b) This Section does not apply to minor facilities with sources subject to requirements of 15A NCAC 2D .0524 or .0525 or 40 CFR Part 60 or 61 until EPA requires these facilities to have a permit under 40 CFR Part 70.

(c) Research and development operations located at manufacturing facilities shall be considered as a separate and discrete facility for the purposes of determining whether such operations constitute a major facility subject to the permitting requirements of this Section. Except where such research and development operations by themselves constitute a major facility, they shall be exempted from the permitting requirements of this Section.

(d) Once a facility is subject to this Section because of emissions of one pollutant, the owner or operator of that facility shall submit an application that includes all sources of all regulated air pollutants located at the facility.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

.0503 DEFINITIONS

For the purposes of this Section, the definitions in G.S. 143-212 and 143-213 and the following definitions apply:

(1) "Affected States" means all states or local air pollution control agencies whose areas of jurisdiction are:

(a) contiguous to North Carolina and located less than D=Q/12.5 miles from the facility, where:

(i) Q = emissions of the pollutant emitted at the highest permitted rate in tons per year, and

(ii) D = distance from the facility to the contiguous state or local air pollution control agency in miles

unless the applicant can demonstrate to the satisfaction of the Director that the ambient impact in the contiguous states or local air pollution control agencies is less than the incremental ambient levels in 15A NCAC 2D .0532 (c)(5); or

(b) within 50 miles of the permitted facility.

(2) "Applicable requirements" means:

(a) any requirement of this Section;

(b) any requirement of Subchapter 2D of this Chapter contained in the federally-approved State Implementation Plan or has been submitted to EPA for approval as part of the federally-approved State Implementation Plan;

(c) any term or condition of a construction permit for a facility covered under 15A NCAC 2D .0530, .0531, or .0532;

(d) any standard or other requirement

under Section 111 or 112 of the federal Clean Air Act, but not including the contents of any risk management plan required under Section 112 of the federal Clean Air Act;

(e) any standard or other requirement under Title IV;

(f) any standard or other requirement governing solid waste incineration under Section 129 of the federal Clean Air Act;

(g) any standard or other requirement under Section 183(e), 183(f), or 328 of the federal Clean Air Act;

(h) any standard or requirement under Title VI of the federal Clean Air Act unless a permit for such requirement is not required under this Section;

(i) any requirement under Section 504(b) or 114(a)(3) of the federal Clean Air Act; or

(j) any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the federal Clean Air Act, but only as it would apply to temporary sources permitted pursuant to 504(e) of the federal Clean Air Act.

(3) "Complete application" means an application that provides all information described under 40 CFR 70.5(c) and such other information that is necessary to determine compliance with all applicable requirements.

(4) "Draft permit" means the version of a permit that the Division offers public participation under Rule .0521 of this Section or affected State review under Rule .0522 of this Section.

(5) "Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the facility has assumed to avoid an applicable requirement to which the facility would otherwise be subject.

(6) "Final permit" means the version of a permit that the Director issues that has completed all review procedures required under this Section if the permittee does not file a petition under Article 3 of G.S. 150B.

(7) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

(8) "Major facility" means a major source as defined under 40 CFR 70.2.

(9) "Minor facility" means any facility that is not a major facility.

(10) "Operation" means the utilization of equipment that emits regulated pollutants.

(11) "Permit renewal" means the process by which a permit is reissued at the end of its term.

(12) "Permit revision" means any permit modification under Rule .0515, .0516, or .0517 of this Section or any administrative permit amendment under Rule .0514 of this Section.

(13) "Proposed permit" means the version of a permit that the Director proposes to issue and forwards to EPA for review under Rule .0522 of this Section.

(14) "Relevant source" means only those sources that are subject to applicable requirements.

(15) "Responsible official" means a responsible official as defined under 40 CFR 70.2.

(16) "Section 502(b)(10) changes" means changes that contravene an express permit term or condition. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms or conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(17) "Synthetic facility" is a facility that would otherwise be required to follow the procedures of this Section except that one or more federally enforceable operational limitations in the permit restrict the potential to emit by limiting hours or operation, the type or amount of material combusted, stored, or processed, or similar parameters. Emission limitations produced by pollutant control equipment described in the permit do not constitute operational limitations in the permit for the purpose of this definition.

(18) "Timely" means:

(a) for initial permit submittals under Rule .0506 of this Section, before the end of the time period specified for submittal of an application for the respective

Standard Industrial Classification;

(b) for a new facility, one year after commencing operation;

(c) for renewal of a permit previously issued under this Section, nine months before the expiration of that permit;

(d) for a minor modification under Rule .0515 of this Section, before commencing the modification;

(e) for a significant modification under Rule .0516 of this Section where the change would not contravene or conflict with a condition in the existing permit, 12 months after commencing operation;

(f) for reopening for cause under Rule .0517 of this Section, 30 days after request for additional information by the Director; or

(g) for requests for additional information, 60 days after request for additional information by the Director.

Statutory Authority G.S. 143-215.3(a)(1); 143-212; 143-213.

.0504 OPTION FOR OBTAINING CONSTRUCTION AND OPERATION PERMIT

(a) Pursuant to Rule .0501(c) or (d)(2) of this Section, the owner or operator of a new or modified facility subject to the requirements of this Section that chooses to obtain a construction and operation permit before the facility must obtain a permit under this Section may file an application under Section .0300 of this Subchapter. However, the exemptions contained in Rule .0302 of this Subchapter shall not apply to such applications.

(b) The applicant shall state in his permit application that he wishes to follow the procedures under this Rule.

(c) If the option allowed under Rule .0501(c)(1) of this Section is used, then the public participation procedures for prevention of significant deterioration under 15A NCAC 2D .0530 and new source review for nonattainment areas under 15A NCAC 2D .0531 do not apply. If the option allowed under Rule .0501(c)(2) of this Section is used, then the public participation procedures in this Section and:

(1) under 15A NCAC 2D .0530 for prevention of significant deterioration, or

(2) under 15A NCAC 2D .0531 for new source review for nonattainment areas shall apply.

(d) If the procedures under Section .0300 of this Subchapter are followed, the permittee shall have one year from the date of beginning operation of the facility or source to file an amended application following the procedures of this Section. The Director shall place a condition in the permit stating this requirement.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

.0505 APPLICATION SUBMITTAL CONTENT

If an applicant does not submit, at a minimum, the following information with his application package, the application package shall be returned:

(1) for new facilities and modified facilities:

(a) an application fee as required under Section .0200 of this Subchapter,

(b) a consistency determination as required under Rule .0507(d)(1) of this Section,

(c) a financial qualification or substantial compliance statement if required, and

(d) applications as required under Rule .0507(a) and (e) of this Section and signed as required by Rule .0520 of this Section;

(2) for renewals: applications as required under Rule .0507(a) and (e) of this Section and signed as required by Rule .0520 of this Section;

(3) for a name change: three copies of a letter signed by the a responsible official in accordance with Rule .0520 indicating the current facility name, the date on which the name change shall occur, and the new facility name;

(4) for an ownership change: an application fee as required under Section .0200 of this Subchapter, and:

(a) three copies of a letter sent by each the seller and the buyer indicating the change, or

(b) three copies of a letter sent by either bearing the signature of both the seller and buyer, and

containing a written agreement with a specific date for the transfer of permit responsibility, coverage, and liability between the current and new permittee; and

(5) for corrections of typographical errors; changes name, address, or telephone number of any individual identified in the permit; changes in test dates or construction dates; or similar minor changes:

three copies of a letter signed by a responsible official in accordance with Rule .0520 of this Section describing the proposed change and explaining the need for the proposed change.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

.0506 INITIAL PERMIT APPLICATION SUBMITTAL

(a) The owner or operator of any facility required to have a permit under this Section shall file a permit application with the Director as follows:

(1) Facilities with a Standard Industrial Classification code of:
   (A) 0000 through 2499, or
   (B) 3400 through 9999 (except 4911),
   shall file a permit application between the first day and the 60th day following approval of this Section by EPA;

(2) Facilities with a Standard Industrial Classification code of:
   (A) 2500 through 2599, or
   (B) 3200 through 3299,
   shall file a permit application between the 90th day and the 150th day following approval of this Section by EPA; or

(3) Facilities with a Standard Industrial Classification code of:
   (A) 2600 through 3199,
   (B) 3300 through 3399, or
   (C) 4911,
   shall file a permit application between the 180th day and 240th day following approval of this Section by EPA.

Facilities having more than one Standard Industrial Classification code shall file a permit application when the first Standard Industrial Classification is called for the facility.

(b) The Director may allow the owner or operator of a facility additional time to submit the permit application required under Paragraph (a) of this Rule provided that:

(1) The owner or operator of the facility shows good cause why additional time is needed, and

(2) The application is submitted within 12 months following approval of this Section by EPA.

(c) If the owner or operator of a facility submits the permit application required under Paragraph (a) of this Rule before he is required to submit the application under Paragraph (a) of this Rule, the Director shall not consider the application to have been submitted for the purposes of completeness review until the first day of the scheduled submittal under Paragraph (a) of this Rule.

(d) The Director shall notify in writing currently permitted facilities that may be subject to this Section of the date that EPA approves this Section.

(e) With the exception of Paragraph (f) of this Rule, the Director shall take final action annually on at least one-third of the permit applications submitted under this Rule so that within three years after EPA approves this Section final action has been taken on all permit applications submitted under this Rule.

(f) The Director shall take final action on any completed permit application containing an early reduction demonstration under Section 112(i)(5) of the federal Clean Air Act within nine months of receipt of the complete application.

(g) The submittal of permit applications and the permitting of facilities subject to Title IV shall occur in accordance with the deadlines in Title IV and Section .0400 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

.0507 APPLICATION

(a) Except for:

(1) minor permit modifications covered under Rule .0515 of this Section,

(2) significant modifications covered under Rule .0516(c) of this Section, or

(3) permit applications submitted under Rule .0506 of this Section,

the owner or operator of a source shall have one year from the date of beginning of operation of the source to file a complete application for a permit or permit revision.

(b) The application shall include all the information described in 40 CFR 70.5(c), including insignificant activities exempted because of size or production rate under Rule .0102(b)(2), and the application form shall be certified by a responsible official for truth, accuracy, and completeness.

(c) Application for a permit, permit revision, or permit renewal shall be made in accordance with Rule .0104 of this Subchapter on official forms of the Division and shall include plans and specifications giving all necessary data and information as required by the application form. Whenever the information provided on these forms does not adequately describe the source or its air pollution abatement equipment, the Director may request that the applicant provide any other information

that the Director considers necessary to evaluate the source and its air pollution abatement equipment.

(d) Along with filing a complete application form, the applicant shall also file the following:

(1) for a new facility or an expansion of existing facility, a consistency determination in accordance with G.S. 143-215.108(f) that:

(A) bears the date of receipt entered by the clerk of the local government, or

(B) consists of a letter from the local government indicating that all zoning or subdivision ordinances are met by the facility;

(2) for a new facility or modification of an existing facility, a source reduction and recycling description in accordance with G.S. 143-215.108(g); and

(3) if required by the Director, information showing that:

(A) The applicant is financially qualified to carry out the permitted activities, or

(B) The applicant has substantially complied with the air quality and emissions standards applicable to the permitted activities.

(e) The applicant shall submit copies of the application package as follows:

(1) for sources subject to the requirements of 15A NCAC 2D .0530, .0531, or .1200, six copies plus one additional copy for each affected state that the Director has to notify;

(2) for sources not subject to the requirements of 15A NCAC 2D .0530, .0531, or .1200, four copies plus one additional copy for each affected state that the Director has to notify.

The Director may at any time during the application process request additional copies of the complete application package from the applicant.

(f) The Division shall review all applications within 60 days of receipt of the application to determine whether the application is complete or incomplete. The notification shall be a letter:

(1) stating that the application is deemed;

(2) stating that the application is incomplete and requesting additional information; or

(3) stating that the application is incomplete and that the applicant needs to rewrite the application and resubmit it.

If the Division does not notify the applicant by letter dated within 60 days of receipt of the application that the application is incomplete, the application shall be deemed complete. A completeness determination shall not prevent the Director from requesting additional information at a later date when such information is considered necessary to properly evaluate the source or its air pollution abatement equipment. A completeness determination shall not be necessary for minor modifications under Rule .0514 of this Section.

(g) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date he filed a complete application but prior to release of a draft permit.

(h) The applicant shall submit the same number of copies of additional information as required for the application package.

(i) The submittal of a complete permit application shall not affect the requirement that any facility have a preconstruction permit under 15A NCAC 2D .0530, .0531, or .0532 or under Section .0400 of this Subchapter.

(j) A non-refundable permit application processing fee shall accompany each application. The permit application processing fees are defined in Section .0200 of this Subchapter. Each permit or renewal application is incomplete until the permit application processing fee is received.

(k) The applicant shall keep on file one complete copy of the application package and any information submitted in support of the application package.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

.0508 PERMIT CONTENT

(a) The permit shall specify and reference the origin and authority for each term or condition and shall identify any differences in form as compared to the applicable requirement on which the term or condition is based.

(b) The permit shall specify emission limitations and standards, including operational requirements and limitations, that assure compliance with all applicable requirements at the time of permit issuance.

(c) Where an applicable requirement of the federal Clean Air Act is more stringent than an

applicable requirement of rules promulgated pursuant to Title IV, both provisions shall be placed in the permit. The permit shall state that both provisions are enforceable by EPA.

(d) The permit for sources using an alternative emission limit established under 15A NCAC 2D .0501(f) or 15A NCAC 2D .0952 shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(e) The expiration date contained in the permit shall be for a fixed term of five years for sources covered under Title IV and for a term of no more than five years from the date of issuance for all other sources including solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the federal Clean Air Act.

(f) The permit shall contain monitoring and related recordkeeping and reporting requirements as specified in 40 CFR 70.6(a)(3) and 70.6(c)(1) including conditions requiring:

(1) the permittee to retain records of all required monitoring data and supporting information for a period of at least five years from the date of the monitoring sample, measurement, report, or application;

(2) the permittee to submit reports of any required monitoring at least every six months. The permittee shall submit reports:

(A) on official forms obtained from the Division at the address in Rule .0104 of this Subchapter,

(B) in a manner as specified by a permit condition, or

(C) on such other forms as approved by the Director; and

(3) the permittee to report malfunctions, emergencies, and other upset conditions as prescribed in 15A NCAC 2D .0524, .0525, or .0535 and to report by the next business day deviations from permit requirements or any excess emissions not covered under 15A NCAC 2D .0524, .0525, or .0535. The Permittee shall report in writing to either the Director or Regional Supervisor all other deviations from permit requirements not covered under 15A NCAC 2D .0535 within two business days after becoming aware of the deviation. The permittee shall include the probable cause of such deviation and any corrective actions or preventive measures taken. All deviations from permit requirements shall be certified by a responsible official.

Where appropriate, the Director may allow records to be maintained in computerized form.

(g) If the facility is required to develop and register a risk management plan pursuant to Section 112(r) of the federal Clean Air Act, the permit need only specify that the owner or operator of the facility will comply with the requirement to register such a plan. The content of the risk management plan need not itself be incorporated as a permit term or condition.

(h) The permit shall contain a condition prohibiting emissions exceeding any allowances that a facility lawfully holds under Title IV. The permit shall not limit the number of allowances held by a permittee, but the permittee may not use allowances as a defense to noncompliance with any other applicable requirement.

(i) The permit shall contain a severability clause so that various permit requirements will continue to be valid in the event of a challenge to any other portion of the permit.

(j) The permit shall state that noncompliance with any condition of the permit is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(k) The permit shall state that the permittee may not use as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(l) The permit shall state that the Director may modify, reopen, revoke and reissue, or terminate the permit for cause. The permit shall state that, except to the extent allowed for minor permit modifications under Rule .0515 of this Section, the filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, notification of planned changes, or anticipated noncompliance does not stay any permit condition.

(m) The permit shall state that the permit does not convey any property rights of any sort, or any exclusive privileges.

(n) The permit shall state that the permittee shall furnish to the Division, in a timely manner, any reasonable information that the Director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance

with the permit. The permit shall state that the permittee shall furnish the Division copies of records required to be kept by the permit when such copies are requested by the Director.

(o) The permit shall contain a provision to ensure that the permittee pays fees required under Section .0200 of this Subchapter.

(p) The permit shall state the terms and conditions for reasonably anticipated operating scenarios identified by the applicant in the application. These terms and conditions shall:

(1) require the permittee, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the operating scenario under which it is operating;

(2) extend the permit shield described in Rule .0512 of this Section to all terms and conditions under each such operating scenario; and

(3) ensure that each operating scenario meets all applicable requirements of Subchapter 2D of this Chapter and of this Section.

(q) The permit shall identify which terms and conditions are enforceable by both EPA and the Division, which are enforceable by the Division only and by EPA only, which are enforceable under the federal Clean Air Act by citizens.

(r) The permit shall state that the permittee shall allow personnel of the Division to:

(1) enter the permittee's premises where the permitted facility is located or emissions-related activity is conducted, or where records are kept under the conditions of the permit;

(2) have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;

(3) inspect at reasonable times and using reasonable safety practices any source, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(4) sample or monitor substances or parameters, using reasonable safety practices, for the purpose of assuring compliance with the permit or applicable requirements at reasonable times.

(s) When a compliance schedule is required under 40 CFR 70.5(c)(8) or under a rule contained in Subchapter 2D of this Chapter, the permit shall contain the compliance schedule and shall state that the permittee shall submit at least semiannually, or more frequently if specified in the applicable requirement, a progress report. The progress report shall contain:

(1) dates for achieving the activities, milestones, or compliance required in the compliance schedule, and dates when such activities, milestones, or compliance were achieved; and

(2) an explanation of why any dates in the compliance schedule were not or will not be met, and any preventive or corrective measures adopted.

(t) The permit shall contain requirements for compliance certification with the terms and conditions in the permit, including emissions limitations, standards, or work practices. The permit shall specify:

(1) the frequency (not less than annually) of submissions of compliance certifications;

(2) a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(3) a requirement that the compliance certification include:

(A) the identification of each term or condition of the permit that is the basis of the certification;

(B) the compliance status as shown by monitoring data and other information reasonably available to the permittee;

(C) whether compliance was continuous or intermittent;

(D) the method(s) used for determining the compliance status of the source, currently and over the reporting period; and

(E) such other facts as the permit may specify to determine the compliance status of the source;

(4) that all compliance certifications be submitted to EPA as well as to the Division; and

(5) such additional requirements as may be specified under Sections 114(a)(3) or 504(b) of the federal Clean Air Act.

(u) The permit shall contain a condition that authorizes the permittee to make Section 502(b)(10) changes in accordance with Rule .0523 of this Section.

(v) The permit shall include all applicable requirements for all sources covered under the permit.

(w) The permit shall specify the conditions under which the permit shall be reopened before the expiration of the permit.

(x) If regulated, fugitive emissions shall be included in the permit in the same manner as stack emissions.

(y) The permit shall contain a condition requiring annual reporting of actual emissions as required under Rule .0207 of this Subchapter.

(z) The permit shall not include sources for which there are no applicable requirements.

(aa) The permit shall not include insignificant activities or other activities that the applicant demonstrates to the satisfaction of the Director to be negligible in their air quality impacts.

(bb) The permit may contain such other provisions as the Director considers appropriate.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108.

.0509 PERMITTING OF NUMEROUS SIMILAR FACILITIES

(a) The Director may issue, after notice and opportunity for public participation provided in Rule .0514 of this Section, a permit to cover numerous similar facilities or sources.

(b) The Director shall not issue a permit under this Rule unless the following conditions are meet:

(1) No facility covered under the permit typically has actual emissions of more than 50 tons per year of particulates, sulfur dioxide, nitrogen oxides, or volatile organic compounds or five tons per year of lead;

(2) There is no unique difference that would require special permit conditions for any individual facility; and

(3) No unique analysis is required for any facility covered under the permit.

(c) A permit issued under this Rule shall comply with all the requirements of this Section.

(d) A permit issued under this Rule shall identify criteria by which facilities or sources may qualify for the permit. To facilities or sources that qualify, the Director shall grant the terms and conditions of the permit.

(e) The facility or source shall be subject to enforcement action for operating without a permit if the facility or source is later determined not to qualify for the terms and conditions of the permit issued under this Rule.

(f) Sources subject to Title IV shall not be eligible for a permit issued under this Rule.

(g) The owner or operator of a facility or source that qualifies for a permit issued under this Rule shall apply for coverage under the terms of the permit issued under this Rule or shall apply for a regular permit under this Section.

(h) The Division need not repeat the public participation procedures required under Rule .0514 of this Section when it grants a request by a permit applicant to operate under a permit issued under this Rule.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

.0510 PERMITTING OF FACILITIES AT MULTIPLE TEMPORARY SITES

(a) The Director may issue a single permit authorizing emissions from similar operations by the same facility owner or operator at multiple temporary sites.

(b) In order for a facility to qualify for a multiple temporary site under this Rule, the operation must involve at least one change of site during the term of the permit.

(c) Sources subject to Title IV shall not be eligible for a permit under this Section.

(d) Permits for facilities at multiple temporary sites shall include:

(1) identification of each site;

(2) conditions that will assure compliance with all applicable requirements at all authorized locations;

(3) requirements that the permittee notify the Division at least 10 days in advance of each change of location; and

(4) conditions that assure compliance with all other provisions of this Section.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

.0511 SYNTHETIC FACILITIES

(a) The owner or operator of a facility to which this Section applies may choose to have terms and conditions placed in his permit to restrict operation to limit the potential to emit of the facility in order to remove the applicability of this Section to the facility.

(b) Any permit containing terms and conditions to remove the applicability of this Section after one year after EPA approves this Section shall be processed according to Rules .0521 and .0522 of this Section when these terms and conditions are first placed in the permit.

(c) After a facility is issued a permit that con-

tains terms and conditions to remove the applicability of this Section, the facility shall comply with the permitting requirements of Section .0300 of this Subchapter.

(d) If the holder of a permit for a synthetic facility applies to change a term or condition that removed his facility from the applicability of this Section, the application shall be processed under this Section.

(e) The Director may require monitoring, recordkeeping, and reporting necessary to assure compliance with the terms and conditions placed in the permit to remove the applicability of this Section.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108.

.0512 PERMIT SHIELD AND APPLICATION SHIELD

(a) Permit Shield:

(1) The Director shall place in a permit issued under this Section a permit term or condition (a permit shield) stating that compliance with the conditions of the permit shall be deemed compliance with applicable requirements specifically identified in the permit in effect as of the date of permit issuance, provided that:

(A) Such applicable requirements are included and are specifically identified in the permit; or

(B) The Director, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) A permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) A permit shield shall not alter or affect:

(A) the power of the Commission, Secretary of the Department, or Governor under G.S. 143-215.3(a)(12) or EPA under Section 303 of the federal Clean Air Act;

(B) the liability of an owner or operator of a facility for any violation of applicable requirements prior to or at the time of permit issuance;

(C) the applicable requirements under Title IV; or

(D) the ability of the Director (or EPA under Section 114 of the federal Clean Air Act) to obtain information to determine compliance of the facility with its permit, this Section, or Subchapter 2D of this Chapter.

(4) A permit shield shall not apply to any change made at a facility that does not require a permit revision.

(5) A permit shield shall not extend to minor permit modifications made under Rule .0515 of this Section until the minor permit modification is approved by the Director and EPA; then the Director may place a permit shield in the permit for the minor permit modification.

(b) Application Shield.

(1) Except as provided in of Paragraph (b)(2) of this Rule, if the applicant submits a timely and complete application for permit issuance (including for renewal), the facility's failure to have a permit under this Section shall not be a violation:

(A) unless the delay in final action is due to the failure of the applicant timely to submit information as required or requested by the Director, or

(B) until the Director takes final action on the permit application.

(2) Paragraph (b)(1) of this Rule shall cease to apply if, subsequent to the completeness determination made under Rule .0507 of this Section, the applicant fails to submit by the deadline specified in writing by the Director, any additional information identified as being needed to process the application.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

.0513 PERMIT RENEWAL AND EXPIRATION

(a) Permits being renewed are subject to the procedural requirements of this Section, including those for public participation and affected State and EPA review.

(b) Permit expiration terminates the facility's right to operate unless a complete renewal application has been submitted at least nine months before the date of permit expiration.

(c) The existing permit shall not expire until the

renewal permit has been issued or denied. All terms and conditions of the existing permit shall remain in effect until the renewal permit has been issued or denied.

Statutory Authority 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

.0514 ADMINISTRATIVE PERMIT AMENDMENTS

(a) An "administrative permit amendment" means a permit revision and that:

(1) corrects typographical errors;

(2) identifies a change in the name, address or telephone number of any individual identified in the permit, or provides a similar minor administrative change at the facility;

(3) requires more frequent monitoring or reporting by the permittee;

(4) changes in test dates or construction dates;

(5) moves terms and conditions from the State-enforceable only portion of a permit to the State-and-federal-enforceable portion of the permit;

(6) moves terms and conditions from the federal-enforceable only portion of a permit to the State-and-federal-enforceable portion of the permit;

(7) changes the permit number without changing any portion of the permit that is federally enforceable that would not otherwise qualify as an administrative amendment; or

(8) changes the State-enforceable only portion of the permit.

(b) In making administrative permit amendments, the Director:

(1) shall take final action on a request for an administrative permit amendment within 60 days after receiving such request,

(2) may make administrative amendments without providing notice to the public or any affected State(s) provided he designates any such permit revision as having been made pursuant to this Rule, and

(3) shall submit a copy of the revised permit to EPA.

(c) The permittee may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(d) Upon taking final action granting a request for an administrative permit amendment, the Director may allow coverage by the permit shield under Rule .0512 of this Section for the administrative permit amendments made.

(e) Administrative amendments for sources covered under Title IV shall be governed by rules in Section .0400 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

.0515 MINOR PERMIT MODIFICATIONS

(a) The procedures set out in this Rule may be used for permit modifications when the modifications:

(1) do not violate any applicable requirement;

(2) do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(3) do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(4) do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the facility has assumed to avoid an applicable requirement to which the facility would otherwise be subject. Such terms and conditions include:

(A) a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Subchapter 2D of this Chapter; or

(B) an alternative emissions limit approved as part of an early reduction plan submitted pursuant to Section 112(i)(5) of the federal Clean Air Act;

(5) are not modifications under any provision of Title I of the federal Clean Air Act; and

(6) are not required to be processed as a significant modification under Rule .0516 of this Section.

(b) In addition to the items required under Rule .0505 of this Section, an application requesting the use of the procedures set out in this Rule shall include:

(1) an application form including:

(A) a description of the change,
(B) the emissions resulting from the change, and
(C) identification of any new applicable requirements that will apply if the change occurs;

(2) a list of the facility's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the thresholds set out under Paragraphs (c)(1) through (3) of this Rule;

(3) the applicant's suggested draft permit;

(4) certification by a responsible official that the proposed modification meets the criteria for using the procedures set out in this Rule and a request that these procedures be used; and

(5) complete information for the Director to use to notify EPA and affected States.

(c) The Director shall use group processing for minor permit modifications processed under this Rule. The Director shall notify EPA and affected States of the requested permit revisions under this Rule and shall provide the information specified in Rule .0522 of this Section on a quarterly basis. If the aggregated emissions from all pending minor permit modifications exceed:

(1) 10 percent of the emissions allowed for the source for which the change is requested,

(2) 20 percent of the applicable definition of major facility, or

(3) five tons per year,

then the Director shall notify EPA and affected States within five business days of the requested permit revision under this Rule and shall provide the information specified in Rule .0522 of this Section.

(d) Within 180 days after receiving a completed application for a permit modification or 15 days after the end of EPA's 45-day review period, whichever is later, the Director shall:

(1) issue the permit modification as proposed;

(2) deny the permit modification application;

(3) determine that the requested modification does not qualify for the procedures set out in this Rule and should therefore, be processed under Rule .0516 of this Section;

(4) revise the draft permit modification and transmit the proposed permit to EPA.

(e) The permit applicant may make the change proposed in his minor permit modification application immediately after filing the completed application with the Division. After the applicant makes the change, the facility shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions until the Director takes one of the final actions specified in Paragraph (d)(1) through (d)(4) of this Rule. Between the filing of the permit modification application and the Director's final action, the facility need not comply with the existing permit terms and conditions it seeks to modify. However, if the facility fails to comply with its proposed permit terms and conditions during this time period, the Director may enforce the terms and conditions of the existing permit that the applicant seeks to modify.

(f) The permit shield allowed under Rule .0512 of this Section shall not extend to minor permit modifications, until the minor permit modification is approved by the Director and EPA; then the Director may place a permit shield in the permit for the minor permit modification.

(g) If the State-enforceable only portion of the permit is revised, the procedures in Section .0300 of this Subchapter shall be followed. The proceedings shall affect only those parts of the permit related to the modification.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

.0516 SIGNIFICANT PERMIT MODIFICATION

(a) The procedures set out in this Rule shall be used for applications requesting permit modifications under this Rule or permit modification that do not qualify for Rule .0514, .0515, .0523, or .0524 of this Section.

(b) Significant modifications include the following:

(1) involve a significant change in existing monitoring permit terms or conditions or relax any reporting or recordkeeping permit terms or conditions;

(2) require or change a case-by-case determination of an emissions limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(3) seek to establish or change a permit

term or condition for which there is no corresponding underlying applicable requirement and that the facility has assumed to avoid an applicable requirement to which the facility would otherwise be subject;

(4) are modifications under any provision of 15A NCAC 2D or 2Q or Title I of the federal Clean Air Act; or

(5) any modification not processed under Rule .0514, .0515, .0523, or .0524 of this Section.

(c) An application for a significant permit modification that would contravene or conflict with the existing permit shall be processed following the procedure set out in Rule .0501(d) of this Section.

(d) An application for a significant permit modification that does not contravene or conflict with the existing permit shall be processed following the procedure set out in Rule .0501(c) of this Section.

(e) This Rule shall not preclude the permittee from making changes consistent with this Section that would render existing permit compliance terms and conditions irrelevant.

(f) Except for the State-enforceable only portion of the permit, the procedures set out in Rule .0507, .0521, or .0522 of this Section shall be followed to revise a permit under this Rule. If the State-enforceable only portion of the permit is revised, the procedures in Section .0300 of this Subchapter shall be followed. The proceedings shall affect only those parts of the permit related to the significant modification.

Statutory Authority G.S. 143-215.3(a)(i); 143-215.107(a)(10); 143-215.108.

.0517 REOPENING FOR CAUSE

(a) A permit shall be reopened and revised under the following circumstances:

(1) Additional applicable requirements become applicable to a facility with remaining permit term of three or more years;

(2) Additional requirements (including excess emissions requirements) become applicable to a source covered by Title IV (Upon approval by EPA, excess emissions offset plans shall be deemed to be incorporated into the permit.);

(3) The Director or EPA finds that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or

(4) The Director or EPA determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(b) Any permit reopening under Subparagraph (a)(1) of this Rule shall be completed or a revised permit issued within 18 months:

(1) after submittal of a complete application if an application is required, or

(2) after the applicable requirement is promulgated if no application is required.

No reopening is required if the effective date of the requirement is after the expiration of the permit term.

(c) Except for the State-enforceable only portion of the permit, the procedures set out in Rule .0507, .0521, or .0522 of this Section shall be followed to reissue a permit that has been reopened under this Rule. If the State-enforceable only portion of the permit is reopened, the procedures in Section .0300 of this Subchapter shall be followed. The proceedings shall affect only those parts of the permit for which cause to reopen exists.

(d) The Director shall notify the permittee at least 30 days in advance of the date that the permit is to be reopened, except in cases of emergency the Director may notice the permittee in less than 30 days before reopening the permit. The notice shall explain why the permit is being reopened.

(e) Within 90 days, or 180 days if EPA extends the response period, after receiving notification from EPA that it finds that a permit needs to be terminated, modified, or revoked and reissued, the Director shall send to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

.0518 FINAL ACTION

(a) The Director may:

(1) issue a permit, permit revision, or a renewal containing the conditions necessary to carry out the purposes of G.S. Chapter 143, Article 21B and the federal Clean Air Act; or

(2) rescind a permit upon request by the permittee; or

(3) deny a permit application when necessary to carry out the purposes of

G.S. Chapter 143, Article 21B and the federal Clean Air Act.

(b) The Director may not issue a final permit or permit revision, except administrative permit amendments covered under Rule .0514 of this Section, until EPA's 45-day review period has expired or until EPA has notified the Director that EPA will not object to issuance of the permit or permit revision, whichever occurs first. The Director shall issue the permit or permit revision within five days of receipt of notification from EPA that it will not object to issuance or of the expiration of EPA's 45-day review period, whichever occurs first.

(c) If EPA objects to a proposed permit, the Director shall respond to EPA's objection within 90 days after receipt of EPA's objection. The Director shall not issue a permit under this Section over EPA's objection.

(d) Any person whose application for a permit, permit revision, or renewal is denied or is granted subject to conditions which are unacceptable to him shall have the right to appeal the Director's decision under Article 3 of G.S. 150B. The person will have 30 days following the notice of the Director's decision on the application, permit, or permit revision in which to appeal the Director's decision.

(e) If EPA does not object in writing to the issuance of a permit, any person may petition EPA to make such objections by following the procedures and meeting the requirements under 40 CFR 70.8(d).

(f) No permit shall be issued, revised, or renewed under this Section unless all the procedure set out in this Section have been followed and all the requirements of this Section have been met. Default issuance of a permit, permit revision, or permit renewal by the Director is prohibited.

(g) Final action shall be taken within 18 months of a submittal of a completed application except for applications submitted under Rule .0505 of this Section.

(h) Thirty days after issuing a permit that is not challenged by the applicant, the Director shall notice the issuance of the final permit. The notice shall be issued in a newspaper of general circulation in the area where the facility is located. The notice shall include the name and address of the facility and permit number.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

.0519 TERMINATION, MODIFICATION, REVOCATION OF PERMITS

(a) The Director may terminate, modify, or revoke and reissue a permit issued under this Section if:

(1) The information contained in the application or presented in support thereof is determined to be incorrect;

(2) The conditions under which the permit or permit renewal was granted have changed;

(3) Violations of conditions contained in the permit have occurred;

(4) The permit holder fails to pay fees required under Section .0200 of this Subchapter within 30 days after being billed;

(5) The permittee refuses to allow the Director or his authorized representative upon presentation of credentials:

(A) to enter the permittee's premises in which a source of emissions is located or in which any records are required to be kept under terms and conditions of the permit;

(B) to have access to any copy or records required to be kept under terms and conditions of the permit;

(C) to inspect any source of emissions, control equipment, and any monitoring equipment or method required in the permit; or

(D) to sample any emission source at the facility;

(6) EPA requests that the permit be revoked under 40 CFR 70.7(g) or 70.8(d); or

(7) The Director finds that termination, modification or revocation and reissuance of a permit is necessary to carry out the purpose of G.S. Chapter 143, Article 21B.

(b) To operate a facility or source after its permit has been revoked is a violation of this Section and G.S. 143-215.108.

(c) Any person whose permit is terminated, modified, or revoked and reissued shall have the right to appeal the Director's decision under Article 3 of G.S. 150B. The person shall have 30 days following the notice of the Director's decision on the termination, modification, or revocation and reissuance in which to appeal the Director's decision.

Statutory Authority G.S. 143-215.3(a)(1),

(1a),(1b); 143-215.107(a)(10); 143-215.108.

.0520 CERTIFICATION BY RESPONSIBLE OFFICIAL

(a) A responsible official shall certify the truth, accuracy, and completeness of any application form, report, or compliance certification required under this Section or by a term or condition in a permit issued under this Section.

(b) This certification shall state that, based on information and belief formed after reasonable inquiry, the statement and information in the document are true, accurate, and complete.

Statutory Authority G.S. 143-215.3(a)(1), (2); 143-215.107(a)(10); 143-215.108.

.0521 PUBLIC PARTICIPATION

(a) The Director shall give public notice with an opportunity for comments and a hearing on all draft permits and permit revisions except permit revisions issued under Rules .0514, .0515, .0524 of this Section. The Director may give public notice with an opportunity for comments and a hearing on draft permit revisions issued under Rule .0514, .0515, 0524 of this Section.

(b) The notice shall be given by publication in a newspaper of general circulation in the area where the facility is located and shall be mailed to persons who are on the Division's mailing list for air quality permit notices.

(c) The notice shall identify:

(1) the affected facility;

(2) the name and address of the permittee;

(3) the name and address of the person to whom to send comments and requests for public hearing;

(4) the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, compliance plan, monitoring and compliance reports, all other relevant supporting materials, and all other materials available to Division that are relevant to the permit decision;

(5) the activity or activities involved in the permit action;

(6) any emissions change involved in any permit modification;

(7) a brief description of the comment procedures;

(8) the procedures to follow to request a hearing unless a hearing has already been scheduled; and

(9) the time and place of any hearing that has already been scheduled.

(d) The Director shall send a copy of the notice to affected States and EPA.

(e) The notice shall allow 30 days for public comments.

(f) If the Director finds that a public hearing is in the best interest of the public, the Director shall require a public hearing to be held on a draft permit. Notice of a public hearing shall be given at least 30 days before the hearing.

(g) If EPA requests a record of the comments and of the issues raised during the public participation process, the Director shall provide EPA this record.

(h) Persons who desire to be placed on the Division's mailing list for air quality permit notices shall send their request to the address in Rule .0507 and shall pay an annual fee of thirty dollars ($30.00).

(i) Any persons requesting copies of material identified in Subparagraph (c)(4) of this Rule shall pay ten cents ($0.10) a page for every page copied. Confidential material shall be handled in accordance with Rule .0107 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1), (3); 143-215.107(a)(10); 143-215.108; 143-215.111(4).

.0522 REVIEW BY EPA AND AFFECTED STATES

(a) The Director shall provide EPA a copy of each permit application, including any application for permit revision, each proposed permit, and each final permit issued under this Section. If EPA has informed the Director that a permit application summary and relevant portion of the permit application and compliance plan are all it needs, the Director may provide this abridgement in place of the complete application.

(b) The Division shall retain for five years a copy of all permit applications, permits, and other related material submitted to or issued by the Division under this Section.

(c) The Director shall provide notice to each affected State of each draft permit at or before the time notice is provided to the public under Rule .0521 of this Section.

(d) The Director, in writing, shall notify EPA and any affected State of any refusal by the Division to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period and shall state the reasons for not accepting any

such recommendations.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; 143-215.111(5).

.0523 CHANGES NOT REQUIRING PERMIT REVISIONS

(a) Section 502(b)(10) changes:

(1) The permittee may make Section 502(b)(10) changes without having his permit revised if:

(A) The changes are not a modification under 15A NCAC 2D of this Subchapter or Title I of the federal Clean Air Act;

(B) The changes do not cause the emissions allowable under the permit to be exceeded; and

(C) The permittee notifies the Director and EPA with written notification at least seven days before the change is made.

(2) The written notification required under Part (a)(1)(C) of this Rule shall include:

(A) a description of the change,

(B) the date on which the change will occur,

(C) any change in emissions,

(D) any permit term or conditions that is no longer applicable as a result of the change.

(3) Section 502(b)(10) shall be made in the permit the next time that the permit is revised or renewed, whichever comes first.

(b) Off-permit changes. A permittee may not make any changes in his operation or emissions without revising his permit unless:

(1) The change affects only insignificant activities and the activities remain insignificant after the change, or

(2) The change is not covered under any applicable requirement.

(c) Emissions trading. To the extent that emissions trading is allowed under 15A NCAC 2D, emissions trading shall be allowed without permit revisions provided that:

(1) All applicable requirements are met; and

(2) The permittee complies with all terms and conditions of the permit in making the emissions trade.

(d) The permit shield allowed under Rule .0512 of this Section shall not apply to changes made under Paragraphs (a) or (b) of this Rule.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

.0524 OWNERSHIP CHANGE

(a) Applications for ownership changes shall:

(1) contain the information required under Rule .0505(4) of this Subchapter, and

(2) follow the procedures under Section .0300 of this Subchapter.

(b) When the Director permits an ownership change, he shall submit a copy of the permit to EPA as an administrative amendment.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

SECTION .0600 - TRANSPORTATION FACILITY PROCEDURES

.0601 PURPOSE OF SECTION AND REQUIREMENT FOR A PERMIT

(a) The purpose of this Section is to describe the procedures to be followed in applying for and issuing a permit for a transportation facility.

(b) The owner or developer of a transportation facility subject to the requirements of 15A NCAC 2D .0800 shall obtain a construction only permit following the procedures in this Section. An operation permit is not needed.

(c) The owner or developer of a transportation facility required to have a permit under this Section shall not commence construction or modification of a transportation facility until he has applied for and received a construction permit.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

.0602 DEFINITIONS

For the purposes of this Section, the following definitions apply:

(1) "Construction" means any activity following land clearing or grading that engages in a program of construction specifically designed for a transportation facility in preparation for the fabrication, erection, or installation of the building components associated with the transportation facility, e.g. curbing, footings, conduit, paving, etc.

(2) "Level of service" means a qualitative measure describing operational conditions within a traffic stream; generally described in terms of such factors as speed and travel time, freedom to

maneuver, traffic interruptions, comfort and convenience, and safety.

(3) "Owner or developer" means any person who owns, leases, develops, or controls a transportation facility.

(4) "Transportation facility" means a complex source as defined at G.S. 143-213(22) and is subject to the requirements of 15A NCAC 2D .0800.

Statutory Authority G.S. 143-213; 143-215.3(a)(1); 143-215.108.

.0603 APPLICATIONS

(a) A transportation facility permit application may be obtained from and shall be filed in writing in accordance with Rule .0104 of this Subchapter.

(b) Applicants shall file transportation facility permit applications at least 90 days before projected date of construction of a new transportation facility or modification of an existing transportation facility.

(c) The permittee shall file requests for permit name or ownership changes as soon as the permittee is aware of the imminent name or ownership change.

(d) A transportation facility permit application shall be made in triplicate on official forms of the Director and shall include plans and specifications giving all necessary data and information as required by the application form.

(e) A transportation facility permit application containing dispersion modeling analyses that demonstrate compliance or traffic analyses showing an acceptable level of service using planned roadway and intersection improvements shall include approval for the improvements from the appropriate state or city department of transportation.

(f) Whenever the information provided on the permit application forms does not adequately describe the transportation facility, the Director may request that the applicant provide any other information that the Director considers necessary to evaluate the transportation facility. Before acting on any permit application, the Director may request any information from an applicant and conduct any inquiry or investigation that he considers necessary to determine compliance with applicable standards including traffic level of service.

(g) A non-refundable permit application fee shall accompany each transportation facility permit application. The permit application fee is described in Section .0200 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

.0604 PUBLIC PARTICIPATION

(a) Before approving or disapproving a permit to construct or modify a transportation facility, the Director shall provide public notice for comments with an opportunity to request a public hearing on the draft permit.

(b) The public notice shall be given by publication in a newspaper of general circulation in the area where the transportation facility is located.

(c) The public notice shall identify:

(1) the affected facility;

(2) the name and address of the permittee;

(3) the name and address of the person to whom comments and requests for public hearing are to be sent;

(4) the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft permit, the application, monitoring and compliance reports, all other relevant supporting materials, and all other materials available to Division that are relevant to the permit decision;

(5) a brief description of the proposed project;

(6) a brief description of the public comment procedures;

(7) the procedures to follow to request a public hearing unless a public hearing has already been scheduled; and

(8) the time and place of any hearing that has already been scheduled.

(d) The public notice shall allow at least 30 days for public comments.

(e) If the Director finds that a public hearing is in the best interest of the public, the Director shall require a public hearing to be held on a draft permit. Notice of a public hearing shall be given at least 30 days before the public hearing.

(f) The Director shall make available for public inspection in at least one location in the region affected, the information submitted by the permit applicant and the Division's analysis of that application.

(g) Any persons requesting copies of material identified in Subparagraph (b)(4) of this Rule shall pay ten cents ($0.10) a page for each page copied. Confidential material shall be handled in accordance with Rule .0107 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1), (3); 143-215.4(b); 143-215.108; 143-215.109.

.0605 FINAL ACTION ON PERMIT APPLICATIONS

(a) The Director may:

(1) issue a permit containing the conditions necessary to carry out the purposes of G.S. Chapter 143, Article 21B;

(2) rescind a permit upon request by the permittee; or

(3) deny a permit application when necessary to carry out the purposes of G.S. Chapter 143, Article 21B.

(b) The Director shall issue a permit for the construction or modification of a transportation facility subject to the rules in 15A NCAC 2D .0800 if the permit applicant submits a complete application and demonstrates to the satisfaction of the Director that the applicable standards will not be exceeded.

(c) The Director shall issue a permit for a period of time that the Director considers reasonable, but such period shall not exceed five years.

(d) The Director shall not approve a permit for a transportation facility that:

(1) interferes with the attainment or maintenance of any applicable standard,

(2) results in a contravention of applicable portions of the implementation plan control strategy, or

(3) is demonstrated with dispersion modeling to exceed an applicable standard.

(e) Any person whose application for a permit is denied or is granted subject to conditions which are unacceptable to him shall have the right to appeal the Director's decision under Article 3 of G.S. 150B. The person shall have 30 days following the notice of the Director's decision on the application or permit in which to appeal the Director's decision.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

.0606 TERMINATION, MODIFICATION AND REVOCATION OF PERMITS

(a) The Director may terminate, modify, or revoke and reissue any permit issued under this Section if:

(1) The information contained in the application or presented in support thereof is determined to be incorrect;

(2) The conditions under which the permit was granted have changed;

(3) Violations of conditions contained in the permit have occurred;

(4) The permittee refuses to allow the Director or his authorized representative upon presentation of credentials:

(A) to enter the permittee's premises where the transportation facility is located or where any records are required to be kept under terms and conditions of the permit;

(B) to have access to any copy or records required to be kept under terms and conditions of the permit;

(C) to inspect the transportation facility and any monitoring equipment or monitoring procedures required in the permit; or

(D) to sample emissions from the facility;

(5) The Director finds that modification or revocation of a permit is necessary to carry out the purpose of G.S. Chapter 143, Article 21B.

(b) The construction or continuation of construction of a transportation facility after its permit has been revoked is a violation of this Section, G.S. 143-215.108, and G.S.143-215.109.

(c) Any person whose permit is terminated, modified, or revoked and reissued shall have the right to appeal the Director's decision under Article 3 of G.S. 150B. The person shall have 30 days following the notice of the Director's decision on the termination, modification, or revocation and reissuance in which to appeal the Director's decision.

Statutory Authority G.S. 143-215.3(a)(1), (1a),(1b); 143-215.108; 143-215.109.

* * * * * * * * * * * * * * * * * * *

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Coastal Management intends to adopt rules cited as 15A NCAC 7H .2101 - .2105.*

The proposed effective date of this action is February 1, 1994.

The public hearing will be conducted at 4:00 p.m. on September 23, 1993 at the Coastline Convention Center, 501 Nutt Street, Wilmington,

NC.

Reason for Proposed Action: The adoptions of these rules will create a new CAMA General Permit which would authorize free-standing, wooden breakwaters within estuarine waters and public trust areas of environmental concern.

Comment Procedures: All persons interested in this matter are invited to attend the public hearing. The Coastal Resources Commission will receive mailed written comments postmarked no later than October 1, 1993. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceeding at the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting Dedra Blackwell, Division of Coastal Management, PO Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .2100 - GENERAL PERMIT FOR CONSTRUCTION OF LOW IMPACT BREAKWATERS FOR SHORELINE PROTECTION IN ESTUARINE AND PUBLIC TRUST WATERS

.2101 PURPOSE

This permit will allow the construction of offshore parallel breakwaters, made from wood, plastic lumber, or metal sheet piling for shoreline protection in public trust areas and estuarine waters according to authority provided in Subchapter 7J .1100 and according to the following guidelines. This permit will not apply within the ocean hazard AEC.

Statutory Authority G.S. 113A-107: 113A-118.1.

.2102 APPROVAL PROCEDURES

(a) The applicant must contact the Division of Coastal Management and complete an application form requesting approval for development. The applicant shall provide information on site location, dimensions of the project area, and his name and address.

(b) The applicant must provide:

(1) confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or

(2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice should instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response will be interpreted as no objection. DCM staff will review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If DCM staff finds that the comments are worthy of more in-depth review, the applicant will be notified that he must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and appropriate Division of Coastal Management representative so that the proposed breakwater alignment can be appropriately marked. Written authorization to proceed with the proposed development may be issued during this visit. Construction of the breakwater must begin within 90 days of this visit or the general authorization expires and it will be necessary to re-examine the alignment to determine if the general authorization can be reissued.

Statutory Authority G.S. 113A-107; 113A-118.1.

.2103 PERMIT FEE

The applicant must pay a permit fee of fifty dollars ($50.00) by check or money order payable to the Department.

Statutory Authority G.S. 113A-107; 113A-118.1.

.2104 GENERAL CONDITIONS

(a) This permit authorizes only the construction of breakwaters conforming to the standards in this Rule.

(b) Individuals shall allow authorized representatives of the Department of Environment, Health, and Natural Resources to make periodic inspections at any time deemed necessary in order to be

sure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed in this Rule.

(c) There shall be no significant interference with navigation or use of the waters by the public by the existence of the breakwater authorized in this Rule.

(d) This general permit may be either modified, suspended or revoked in whole or in part if the Department determines that such action would be in the best public interest. This general permit will not be applicable to proposed construction where the Department determines that authorization may be warranted, but that the proposed activity might significantly affect the quality of the human environment, or unnecessarily endanger adjoining properties.

(e) This general permit will not be applicable to proposed construction when the Department determines after any necessary investigations, that the proposed activity would adversely affect areas which possess historic, cultural, scenic, conservation, or recreational values.

(f) The Department may, on a case-by-case basis, determine that the general permit shall not be applicable to a specific construction proposal. In those cases, individual permit applications and review of the proposed project will be required according to 15A NCAC 7J.

(g) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.

(h) Development carried out under this permit must be consistent with all local requirements, AEC Guidelines, and local land use plans current at the time of authorization.

Statutory Authority G.S. 113A-107; 113A-118.1.

.2105 SPECIFIC CONDITIONS

(a) The breakwater shall be positioned no more than 20 feet waterward of the mean high water or normal water level contour (whichever is applicable) or 20 feet waterward of the waterward edge of existing emergent wetlands at any point along its alignment. For narrow waterbodies (canals, creeks, etc.) the breakwater alignment shall not be positioned offshore more than one third (1/3) the width of the waterbody.

(b) Breakwaters authorized under this General Permit shall be allowed only in waters that average less than three feet in depth along the proposed alignment as measured from the mean high water or normal water level contour.

(c) Construction authorized by this general permit will be limited to a maximum length of 500 feet.

(d) The breakwater shall be constructed with at least one inch openings between standard width (6 to 12 inch) sheathing boards and at least one five foot opening at every 100 foot of breakwater. The breakwater sections may be staggered and overlap as long as the five foot separation between sections is maintained. Overlapping sections shall not overlap more than 10 feet.

(e) The height of the breakwater shall not exceed one foot above mean high water or the normal water level.

(f) Offshore breakwater sections shall be set back 15 feet from the adjoining property lines. The set back may be waived by written agreement of the adjacent riparian owner(s) or when the two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the breakwater begins, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any construction of the breakwater.

(g) Breakwaters shall be marked at 100 foot intervals with reflectors extending at least three feet above mean high water.

(h) No backfill of the breakwater or any other fill of wetlands, estuarine waters, public trust areas, or highground is authorized by this general permit.

(i) No excavation of the shallow water bottom, any wetlands, or high ground is authorized by this general permit.

(j) The breakwater must be constructed of treated wood, plastic lumber, metal sheet piles or other suitable materials approved by Department personnel.

(k) Perpendicular sections, return walls, or sections which would enclose estuarine waters or public trust areas shall not be allowed under this permit.

(l) The permittee or property owner will maintain the breakwater in good condition and in conformance with the terms and conditions of this permit or the remaining breakwater structure shall be removed within 30 days of notification from the Division of Coastal Management.

Statutory Authority G.S. 113A-107; 113A-118.1.

* * * * * * * * * * * * * * * * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10F .0339; and adopt rule cited as 15A NCAC 10F .0365.

The proposed effective date of this action is December 1, 1993.

The public hearing will be conducted at 10:00 a.m. on September 20, 1993 at the Archdale Building, Room 332, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

Reason for Proposed Action:
***15A NCAC 10F .0339** - To establish a no wake area near the camping areas on Lake James State Park.*
***15A NCAC 10F .0365** - To establish a no wake zone on the Scuppernong River.*

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from September 1, 1993 to October 1, 1993. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

.0339 MCDOWELL COUNTY

(a) Regulated Areas. This Rule applies to the following waters located on Lake James in McDowell County:

(1) that area adjacent to the shoreline of the McDowell Wildlife Club property;
(2) that area adjacent to the shoreline of the Marion Moose Club property;
(3) that area known as Morgan Cove;
(4) that area within 50 yards of the shoreline at the New Manna Baptist Youth Camp;
(5) that area within 50 yards of the shoreline at Burnett's Landing;
(6) the cove area adjacent to the State Park swimming area;
(7) the cove area adjacent to the State Park picnic area and dock;
(8) that area within 50 yards of camping areas in the Lake James State Park as designated by the appropriate markers;
(9) ~~(8)~~ that area within 50 yards of the boat launching ramp at the Marion Lake Club.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within any of the regulated areas described in Paragraph (a) of this Rule.

(c) Restricted Swimming Areas. No person operating or responsible for the operation of any vessel, surfboard or waterskis shall permit the same to enter any marked swimming area located on the regulated area.

(d) Placement and Maintenance of Markers. The Board of Commissioners of McDowell County is designated a suitable agency for placement and maintenance of the markers implementing this Rule.

Statutory Authority G.S. 75A-3; 75A-15.

.0365 TYRRELL COUNTY

(a) Regulated Area. This Rule applies to the following waters in Tyrrell County: that portion of the Scuppernong River from 300 yards west of the Highway 64 bridge to 100 yards east of the Highway 64 bridge as designated by the appropriate markers.

(b) Speed Limit. It is unlawful to operate a vessel at greater than no-wake speed in the regulated areas described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Tyrrell County is designated as the suitable agency for the placement and maintenance of the markers implementing this Rule.

Statutory Authority G.S. 75A-3; 75A-15.

* * * * * * * * * * * * * * * * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR-Commission for Health Services intends to amend rule cited as 15A NCAC 20A .0006.

The proposed effective date of this action is January 4, 1994.

The public hearing will be conducted at 10:00 a.m. on October 15, 1993 at the Groundfloor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.

Reason for Proposed Action: To implement legislation which provides $25,000 to purchase rabies treatment (immune globulin and vaccine) for medically indigent individuals exposed to rabid or potentially rabid animals. Individuals must be at or below the federal poverty level on July 1 of each fiscal year and treatment recommended by a physician.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to John P. Barkley, Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629. All written comments must be received by October 20, 1993. Persons who wish to speak at the hearing should contact John P. Barkley at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

Editor's Note: This Rule was filed as a temporary amendment effective August 9, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 20 - LABORATORY SERVICES

SUBCHAPTER 20A - GENERAL POLICIES

.0006 FEES

(a) Upon request, this laboratory furnishes to authorized senders of specimens and samples kits and materials for collecting and submitting specimens and samples. The fees for these kits and materials are based on cost and are subject to change as costs change.

(b) Upon request, this laboratory furnishes, to persons authorized to administer them vaccines and other biological such as antirabic treatments. The prices for these are based on cost and cost of shipment and are subject to change as these costs change.

(c) An individual is eligible to receive rabies vaccine and immune globulin without charge for rabies post-exposure treatment when the individual meets all of the following criteria:

(1) the individual's family income is at or below the federal poverty level in effect on July 1 of each

fiscal year as determined by the local health department;

(2) the individual meets the residency and other requirements set forth in 15A NCAC 24A .0200, except that the individual shall not be eligible for Medicaid or health insurance reimbursement for rabies post-exposure treatment as determined by the local health department; and

(3) the treatment is recommended by a physician licensed to practice medicine.

(d) ~~(c)~~ The State Laboratory of Public Health provides laboratory analysis services to assist owners and operators of public water systems in complying with the North Carolina Drinking Water Act. These services must be contracted for on a yearly basis and must be paid for in advance. Refunds of prepayments will be made only when:

(1) The water system ceases to exist as a public water system or merges with a larger water system;

(2) The water system changes in status from a community to a non-community water system or from a non-community to a community water system;

(3) There has been an overpayment of fees; or

(4) The laboratory fails to perform an analysis in accordance with the contract.

(e) ~~(d)~~ Fees for the analysis of public water supplies shall be as follows:

PARAMETER	FEE
Inorganic Chemistry	$200.00
Organic Chemistry	$190.00
Coliform	$ 20.00
Trihalomethanes	$ 60.00
Sodium and Corrosivity	$ 60.00
Radiochemistry:	
gross alpha and beta	$ 50.00
radium 226	$ 65.00
radium 228	$ 50.00
uranium	$ 75.00
Any single organic or inorganic parameter	$ 15.00

Statutory Authority G.S. 130A-5(12); 130A-326.

* * * * * * * * * * * * * * * * * * *

***Notice** is hereby given in accordance with G.S. 150B-21.2 that EHNR - Commission for Health Services intends to amend rule cited as 15A NCAC 24A .0202.*

***The** proposed effective date of this action is January 4, 1994.*

***The** public hearing will be conducted at 10:00 a.m. on October 15, 1993 at the Groundfloor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC*

***Reason** for Proposed Action: Recent legislation removed the purchase of care income scales from the law and increased Cancer Program funding for the purpose of increasing the income scale for that program to 100% of the federal poverty level. This amendment established income scales accordingly for all purchase of care programs.*

***Comment** Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to John P. Barkley, Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629. All written comments must be received by October 20, 1993. Persons who wish to speak at the hearing should contact John P. Barkley at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments*

made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS, OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

***Editor's Note:** The amendments to Paragraphs (a), (b), (c), (d), (e), (f), and (g) were filed as a temporary amendment effective August 9, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.*

CHAPTER 24 - GENERAL PROCEDURES FOR PUBLIC HEALTH PROGRAMS

SUBCHAPTER 24A - PAYMENT PROGRAMS

SECTION .0200 - ELIGIBILITY DETERMINATIONS

.0202 DETERMINATION OF FINANCIAL ELIGIBILITY

(a) A patient must meet the financial eligibility requirements of this Subchapter to be eligible for benefits provided by ~~any of~~ the payment programs~~, except as provided in Paragraph (b) of this Rule~~. Financial eligibility ~~for all state funded payment programs~~ shall be determined through application of ~~the General Assembly's financial eligibility~~ income scales ~~for non-medicaid medical programs~~. The definition of annual net income in Rule .0203 of this Subchapter and the definitions of family in Rule .0204 of this Subchapter shall be used in applying the ~~General Assembly's financial eligibility~~ income scales ~~and the federal poverty scale for payment program eligibility purposes~~.

(b) A person shall be financially eligible for inpatient services under the Sickle Cell Program, and for inpatient services under Children's Special Health Services if the person is age 8-20 if the net family income is at or below the following scale: Family Size 1: $4,200; Family Size 2: $5,300; Family Size 3: $6,400; Family Size 4: $7,500; Family Size 5 and over: add $500 per family member.

(c) A person shall be financially eligible for the Cancer Program, for outpatient services under the Sickle Cell Program, for outpatient services under Children's Special Health Services, and for inpatient services under Children's Special Health Services if the person is age 0-7, if the net family income is at or below the federal poverty level in effect on July 1 of each fiscal year.

~~(b)~~ (d) A person shall be financially eligible for the ~~federal AIDS Drug Reimbursement~~ HIV Medications Program if the ~~person's~~ net family income is at or below 85 percent of the federal poverty level in effect on April 1 of each fiscal year.

(e) A person shall be financially eligible for the Kidney Program if the net family income is at or below the following scale: Family Size 1: $6,400; Family Size 2: $8,000; Family Size 3: $9,600; Family Size 4: $11,000; Family Size 5: $12,000; Family Size 6 and over: add $800 per family member.

~~(c)~~ (f) The financial eligibility requirements of this Subchapter shall not apply to:

(1) Migrant Health Program;

(2) Children's Special Health Services when the requirements of 15A NCAC 21F .0800 are met;

(3) School Health Program financial eligibility determinations performed by a local health department which has chosen to use the financial eligibility standards of the Department of Public Instruction's free lunch program;

(4) Prenatal outpatient services sponsored through local health department delivery funds, 15A NCAC 21C .0200; or through Perinatal Program high risk maternity clinic reimbursement funds, 15A NCAC 21C .0300;

(5) Diagnostic assessments for infants up to 12 months of age with sickle cell syndrome.

~~(d)~~ (g) Except as provided in Paragraph ~~(e)~~ (h) of this Rule, once an individual is determined financially eligible for payment program benefits, the individual shall remain financially eligible for a period of one year after the date of application for financial eligibility unless there is a change in the individual's family size pursuant to Rule .0204 of this Subchapter or his family's financial resources or expenses during that period. If there is a change, financial eligibility for payment program benefits must be redetermined. Financial eligibility must be redetermined at least once a year.

~~(e)~~ (h) For purposes of the Kidney Program, once an individual is determined to be financially eligible, if the application for financial eligibility was received by the Department in the fourth quarter of the fiscal year, the individual shall remain financially eligible for benefits under the Kidney Program until the end of the next fiscal year unless there is a change in the individual's family size pursuant to Rule .0204 of this Subchapter or his family's financial resources or expenses during that period.

~~(f)~~ (i) If the most current financial eligibility form on file with the Department shows that the patient was financially eligible on the date an Authorization Request for payment for drugs was received, the Authorization Request may be approved so long as the Authorization Request is received less than 30 days prior to the expiration of financial eligibility and the authorized service does not extend more than 30 days after the ~~term of eligibility expires~~ expiration of financial eligibility.

Statutory Authority G.S. 130A-4.2; 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-205.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. State Board of Cosmetic Art Examiners intends to amend rules cited as 21 NCAC 14I .0105; 14J .0303, .0501; 14N .0114.

The proposed effective date of this action is December 1, 1993.

The public hearing will be conducted at 1:00 p.m. on October 4, 1993 at the Grove Towers, 5th Floor, 1110 Navaho Dr., Raleigh, N.C.

Reason for Proposed Action:
21 NCAC 14I .0105 *- To add further information about transfer of credit.*
21 NCAC 14J .0303 *- Add to personal supplies with charge explained.*
21 NCAC 14J .0501 *- Expand the area from which the Board can get records from out-of-state applicants.*
21 NCAC 14N .0114 *- Additional explanation of Failure to Comply.*

Comment Procedures: The record shall be open for 30 days to receive written and oral comments. Written comments should be received by the N.C. State Board of Cosmetic Art Examiners by October 4, 1993, and requests to speak must be in writing and received by September 27, 1993 prior to the hearing, to be considered as part of the hearing record. Comments should be addressed to Vicky R. Goudie, Executive Secretary, N.C. State Board of Cosmetic Art Examiners, 1110 Navaho Dr., Raleigh, N.C. 27609. Time allowed five minutes to speak.

CHAPTER 14 - BOARD OF COSMETIC ART EXAMINERS

SUBCHAPTER 14I - OPERATIONS OF SCHOOLS OF COSMETIC ART

SECTION .0100 - RECORD KEEPING

.0105 TRANSFER OF CREDIT

(a) In order that hours may be transferred from one cosmetic art school to another, a student must pass an entrance examination given by the school to which the student is transferring, covering the portion of work completed in the previous school or schools attended.

(b) A cosmetology student must complete at least 250 hours in the cosmetic art school certifying his or her application for the state board examination.

(c) Upon written petition by the student, the Board, in its discretion, may make an exception to the requirements set forth in Paragraph (b) of this Rule if the student shows that unusual circumstances beyond the student's control prohibited him or her from completing 250 hours at the school which certifies his or her application.

(d) A student who wishes to transfer from a cosmetology course to a manicuring course may not receive credit for hours received in the cosmetology course.

(e) A student who wishes to transfer from a manicurist course to a cosmetology course may not receive credit for hours received in the manicurist course.

Statutory Authority G.S. 88-23; 88-30.

SUBCHAPTER 14J - COSMETOLOGY CURRICULUM

SECTION .0300 - COMBINED STUDIES

.0303 STUDENTS' PERSONAL SUPPLIES

Each student shall have the following minimum supplies:

(1) manicure supplies and implements for a complete manicure;
(2) six combs;
(3) six brushes;
(4) sufficient pin curl clips;
(5) sufficient smooth rollers;
(6) one marcel comb;
(7) one electric curling iron;
(8) one razor;
(9) two scissors, one tapered and one straight;
(10) one eyebrow tweezer;
(11) one tint comb;
(12) one blow dryer; and
(13) one copy of "An Act to Regulate the Practice of Cosmetic Art in the State of North Carolina", and a copy of the course curriculum requirements, both of which shall be at no charge for the first copy, issued by the Board.

Statutory Authority G.S. 88-23.

SECTION .0500 - CREDIT FOR COSMETOLOGY STUDY OUTSIDE OF NORTH CAROLINA

.0501 APPROVAL OF CREDIT FOR COSMETOLOGY INSTRUCTION/ ANOTHER STATE

(a) A cosmetology student may receive credit for instruction taken in another state if the conditions set forth in this Rule are met.

(b) The cosmetology student's record shall be certified by the state agency or department that issues licenses to practice in the cosmetic arts. If this agency or department does not maintain any student records or if the state does not give license to practice in the cosmetic arts, then the records may be certified by any state department, ~~or~~ state agency, or the certified schools in states where the Board or another state agency does not keep records, that ~~does~~ do maintain such records and ~~is~~ are willing to certify their accuracy. If no state department, ~~or~~ board or certified school will certify the accuracy of the student's records, then this Board will not give any credit for the out-of-state instruction.

(c) If the requirements of Paragraph (b) of this Rule are met, then the Board will give credit for hours of course work and for mannequin and live model performances to the extent certified, up to the amount of credit that the student would receive for instruction in a school licensed by the Board. If the certification includes only total hours and does not specify what performances have been completed, this Board will not give any credit for performances completed as part of the out-of-state instruction.

Statutory Authority G.S. 88-10; 88-13.

SUBCHAPTER 14N - EXAMINATIONS

SECTION .0100 - GENERAL PROVISIONS

.0114 FAILURE TO COMPLY WITH CHAPTER

(a) The examiner may dismiss from the examination any candidate who fails to comply with this Chapter or who disrupts the examination, and the examination may be treated as having been failed by the applicant.

(b) With respect to fees only, a candidate who has been dismissed pursuant to Paragraph (a) of this Rule, will be treated as though the candidate has failed to appear.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-16; 88-17; 88-21(a)(16); 88-23; 88-30(4).

* * * * * * * * * * * * * * * * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Mortuary Science intends to amend rule cited as 21 NCAC 34A .0201.

The proposed effective date of this action is December 1, 1993.

The public hearing will be conducted at 10:00 a.m. on October 15, 1993 at the Board Room, 801 Hillsborough Street, Raleigh, NC 27603.

Reason for Proposed Action: To reduce total license fees of persons holding both funeral director's and embalmer's licenses.

Comment Procedures: Interested persons may present statements, orally and in writing, at the public hearing and in writing prior to the hearing by mail addressed to the NC Board of Mortuary Science, Box 27368, Raleigh, NC 27611-7368.

CHAPTER 34 - BOARD OF MORTUARY SCIENCE

SUBCHAPTER 34A - BOARD FUNCTIONS

SECTION .0200 - FEES AND OTHER PAYMENTS

.0201 FEES AND PENALTIES

(a) Fees for funeral service shall be as follows:

Establishment permit	
Application	$250.00
Annual renewal	$150.00
Late renewal penalty	$100.00
Establishment reinspection fee	$100.00
Courtesy card	
Application	$ 75.00
Annual renewal	$ 50.00
Out-of-state licensee	
Application	$200.00
Embalmer, funeral director, funeral service	
Application, North Carolina resident	$150.00
Application, non-resident	$200.00
Annual renewal	
Embalmer	~~$ 30.00~~ $ 40.00
Funeral director	~~$ 30.00~~ $ 40.00
Total fee, embalmer and funeral director, when both are held by same person	$ 60.00
Funeral service	$ 60.00
Reinstatement fee	$ 50.00
Resident trainee permit	
Application	$ 50.00
Annual renewal	$ 35.00
Late renewal penalty	$ 25.00

Duplicate license certificate	$ 25.00
Chapel registration	
Application	$150.00
Annual renewal	$100.00
(b) Fees for crematories shall be as follows:	
License	
Application	$400.00
Annual renewal	$150.00
Late renewal penalty	$ 75.00
Crematory reinspection fee	$100.00
Per-cremation fee	$ 5.00
(c) Fees for preneed funeral contract regulation shall be as follows:	
Preneed funeral establishment license	
Application	$100.00
Annual renewal	$100.00
Preneed sales license	
Application	$ 10.00
Annual renewal	$ 10.00

Statutory Authority G.S. 90-210.23(a); 90-210.28; 90-210.48; 90-210.67(b),(c).

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of State Personnel/State Personnel Commission intends to amend rules cited as 25 NCAC 1D .0301, .0308; 1E .0205, .0209, .0301, .0314, .0706 - .0710, .1102, .1105, .1110, .1306, .1402 - .1406, .1408; and adopt rules cited as 25 NCAC 1D .2401 - .2404.

The proposed effective date of this action is December 1, 1993.

The public hearing will be conducted at 9:00 a.m. on October 6, 1993 at the Personnel Development Center, 101 Peace Street, Raleigh, N.C.

Reason for Proposed Action:

***25 NCAC 1D .0301, .0308** - To clarify the definition of promotion, to change the method by which salary increases for promotions are determined, and to reduce from 24 to 12 months the time that must elapse before a salary increase can be given after a reduction in grade with no cut in salary.*

***25 NCAC 1D .2401 - .2404** - To provide on-call compensation for Department of Correction employees in criminal justice positions who provide electronic house arrest immediate response services.*

***25 NCAC 1E .0205, .0209** - To conform to a recent revision of G.S. 126-8 which requires that excess vacation leave be converted to sick leave.*

***25 NCAC 1E .0301, .0314** - To offer guidance and clarification to state agencies and universities in conforming to Family and Medical Leave rules which became effective August 2, 1993 and to conform to recent revision of G.S. 126-8 which requires that excess vacation leave be converted to sick leave.*

***25 NCAC 1E .0706 - .0710** - To offer guidance and clarification to state agencies and universities in conforming to the amendment of G.S. 126-8 which requires that excess vacation be converted to sick leave and to the amendment of Workers' Compensation leaves.*

***25 NCAC 1E .1102, .1105, .1110** - To provide a provision for employees who are not covered by the Family and Medical Leave Act and to conform to recent revision of G.S. 126-8 which requires that excess vacation leave be converted to sick leave.*

***25 NCAC 1E .1306** - To conform to the recent revision of G.S. 126-8 which requires that excess vacation leave be converted to sick leave.*

***25 NCAC 1E .1402 - .1406, .1408** - To offer guidance and clarification to state agencies and universities on further implementing the Family and Medical Leave Act which became effective August 2, 1993.*

Comment Procedures: Interested persons may present statements either orally or in writing at the Public Hearing or in writing prior to the hearing

by mail addressed to: Barbara A. Coward, Office of State Personnel, 116 W. Jones Street, Raleigh, N.C. 27603.

CHAPTER 25 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1D - COMPENSATION

SECTION .0300 - PROMOTION

.0301 DEFINITION AND POLICY

Promotion is a change in status upward, documented according to customary professional procedure and approved by the State Personnel Director, resulting from assignment to a position ~~of~~ assigned a higher ~~level~~ salary grade. When it is practical and feasible, a vacancy should be filled from among eligible employees; a vacancy must be filled by an applying employee if required by 25 NCAC, Subchapter 1H, Recruitment and Selection, Section .0600, General Provisions, Rule .0625, Promotion Priority Consideration for Current Employees. Selection should be based upon demonstrated capacity, quality and length of service.

Statutory Authority G.S. 126-4; 126-7.1.

.0308 SALARY INCREASES

The purpose of a promotional pay increase is to reward the employee for the assumption of duties more responsible and more difficult than those in the current position. Subject to the availability of funds, salary increases, not to exceed the maximum of the range, may be given in accordance with the following:

(1) Permanent Promotion:

(a) Salaries at the hiring rate shall be increased to the new hiring rate.

(b) Salaries at the minimum rate or within the range shall be increased to the new minimum rate of the grade to which promoted or by five percent, whichever is larger. Exceptions:

(i) A promotional increase is not required if a specific salary rate or limitation is published in advance of a promotional offer because of internal salary equity or budget considerations in the receiving work unit or agency. If this occurs, a salary increase above the salary rate posted may not be paid. If conditions change that eliminate the equity problem or if additional funds become available that can be used for this purpose, agency management may consider an additional increase in accordance with the provisions outlined under Rule .0303 of this Section.

(ii) If the employee's salary is above the maximum as a result of a reallocation down, no increase can be given, but the salary may remain above the maximum.

(c) If the employee is promoted to a position within the same class series or occupational group:

(i) the salary may be increased by ~~more than~~ up to five percent. for each grade provided by the promotion, or

(ii) the salary may be established in accordance with the rules at 25 NCAC 1D .0200, New Appointments.

~~The amount of increase shall be determined consistent with the employee's related training and experience and take into consideration prior performance increases, work unit equity, and any other salary related considerations. The total shall not exceed five percent for each grade provided by the promotion.~~

(d) If the employee is promoted to a position in a different occupational area, the salary may be ~~increased by more than five percent, the total not to exceed five percent for each grade provided by the promotion, if the employee has directly related training and/or experience above the minimum requirements to qualify for the salary requested~~ established in accordance with the rules at 25 NCAC 1D .0200, New Appointments. The nature and magnitude of the change in jobs, the need to maintain equity of salaries within the work unit, and other management needs must be given consideration when making salary decisions. Agency management is responsible for assuring that inequities are not created. When establishing salaries in accordance with 25 NCAC 1D .0200, the personnel action forms must include the justification for the salary decision. If an employee has been reduced to a lower salary grade through demotion, reassignment, reallocation or salary range revision, but without a corresponding reduction in salary, and the

employee is later promoted to a position with a higher grade, the number of grades in the original reduction shall be considered to have been compensated and shall not be considered in the salary setting procedure in this Rule. If the reduction in grade occurred as much as ~~24~~ 12 months previously, the agency may give consideration to granting a salary increase within the provisions of this policy. Factors to be considered are the nature of the change in jobs and the need to maintain equity of salaries within the work unit.

(e) Only with the prior approval of the State Personnel Director and only in well-documented cases which involve circumstances such as severe labor market conditions, unusual change in the scope of work, extraordinary qualifications, or resolution of serious equity problems will salary increases above that allowed by the provisions in this Sub-item be considered ~~which equate to more than five percent for each grade provided by the promotion~~. Personnel forms must include the justification.

(f) If the employee is to receive a performance salary increase on the same date as the promotion, the increase may be given before the promotional increase.

(g) If an employee is promoted from a class for which there is no special entry rate into a class which has a special entry rate, the employee's salary may be increased by the amount of the promotional increase plus the percent difference between the minimum and the special entry rate authorization.

(2) Temporary Promotion:

(a) Temporary promotions may be made when an employee is placed in an "acting" capacity for a period of time. When an employee is placed in an "acting" capacity, at the discretion of management, one of the following may occur:

(i) The employee may be placed in the higher level position (if vacant) with an understanding that he will return to the former position and salary when the position is filled.

(ii) A salary adjustment may be given in the present position with the understanding that the salary will be decreased when the "acting" capacity terminates. Indicate in Section 21 of the PD-105 the position number and classification for which the employee is serving in an "acting" capacity. Also include expected duration of "acting" capacity.

(b) The provisions for salary increases for permanent promotions apply in either case, except that the provision for a mandatory increase may not be applicable.

(c) The length of time that an employee is in an acting capacity should be limited, and the amount of promotional salary increase determined by the degree of assumption of the higher level duties.

Statutory Authority G.S. 126-4.

SECTION 2400 - ON CALL COMPENSATION

.2401 ELIGIBLE EMPLOYEES

(a) Certain classes of positions are eligible for on-call compensation when the employee is required to be on call and report for work upon contact via pager or telephone in the event of an emergency. These classes are as follows:

(1) Employees in medical or paramedical positions.

(2) Employees in positions involved in the repair of facilities or mechanical equipment necessary to protect State property and prevent conditions which have an adverse effect on the health or well-being of patients, inmates, or students, such as failures in the heating system, water supply, electricity, and other failures associated with building appendages.

(3) Employees in criminal justice positions which provide electronic house arrest immediate response services, in case of an offender's violation that jeopardizes the public's safety and may warrant emergency response by duly trained personnel.

(b) Management is responsible for designating the individuals who are to be placed on call and submit a list of them to the agency personnel officer for approval. It is not intended that the provisions of this policy be applied to administrative or management personnel.

Statutory Authority G.S. 126-4; 126-4(5).

.2402 RATE OF PAY/COMPENSATORY TIME

(a) The plan of compensation shown in this Paragraph shall apply.

On Call Hours	Compensatory Time Earned	- or -	Payment Amount
8	1 hour		$.94 per hour ($7.52 per shift)

If the aforementioned plan is not applicable to the work schedule, compute on a pro rata basis. (Example: A 12-hour shift would be 1½ hours compensatory time or $11.28 payment. An entire week (128 hours) would be 16 hours of compensatory time or $120.32 Payment.)

(b) It is the intent of this provision that compensatory time be used whenever possible. Compensatory time is not accumulative beyond a 12 month period. For this reason, an employee should be required to take the time off as soon as possible after it is accumulated. If the time off is not taken within 12 months, or if an employee separates or transfers to another agency before it is taken, the employee shall be paid for the accumulated time.

(c) If funds are available and cash payment is necessary, it will be paid on a special payroll. Instructions for agencies under Central Payroll will be issued by the State Controller's Office.

Statutory Authority G.S. 126-4; 126-4(5).

.2403 EMERGENCY CALL-BACK PAY

(a) If the employee is called back to work, emergency call-back time provisions apply. (Reference Section .1500, Emergency Call-Back Pay of this Subchapter.)

(b) If emergency situations can be dealt with properly under the general provisions of emergency call-back pay, the on-call provision shall not be used.

Statutory Authority G.S. 126-4; 126-4(5).

.2404 OVERTIME

On-call time is not considered as working time for overtime purposes. The employee is free to engage in personal pursuits during any portion of the on-call shift; such personal pursuits should not restrict the employee from returning to work. However, if a cash payment is made for being on call, it must be included in the regular hourly rate when computing overtime payments.

Statutory Authority G.S. 126-4; 126-4(5).

SUBCHAPTER 1E - EMPLOYEE BENEFITS

SECTION .0200 - VACATION LEAVE

.0205 MAXIMUM ACCUMULATION

Leave may be accumulated without any applicable maximum until December 31 of each calendar year. However, if the employee separates from service, payment for accumulated leave shall not exceed 240 hours. On December 31 any employee with more than 240 hours of accumulated leave shall have the excess accumulation ~~cancelled~~ converted to sick leave so that only 240 hours are carried forward to January 1 of the next calendar year.

Statutory Authority G.S. 126-4; 126-8.

.0209 OPTIONS DURING LEAVE WITHOUT PAY

(a) An employee going on leave without pay may exhaust vacation leave or may retain part or all accumulated leave until the employee returns, the only exception being:

(1) if an employee has accumulated vacation leave, all leave must be exhausted before going on leave without pay for vacation purposes; or

(2) if an employee requests leave for other personal reasons for a period not to exceed 10 workdays, leave must be used if available; however, if the leave is for a period longer than 10 workdays, the employee may choose to use vacation leave or retain it for future use. Options for use of vacation leave for employees receiving Workers' Compensation Benefits are covered under Section .0700 of this Subchapter. Options for use of vacation leave for military purposes are covered under Military Leave, Section .0800 of this Subchapter. Options for use of vacation leave for employees eligible for family and medical leave are covered under Family and Medical Leave,

Section .1400 of this Subchapter.

(b) If leave without pay extends through December 31, any leave accumulation above 240 hours shall be ~~cancelled~~ converted to sick leave.

(c) When exhausting leave an employee continues to accumulate leave, is eligible to take sick leave, is entitled to holidays and is eligible for salary increases during that period.

Statutory Authority G.S. 126-4.

SECTION .0300 - SICK LEAVE

.0301 SICK LEAVE CREDITS

(a) Sick leave credits at the rate of eight hours per month or 96 hours per year shall be provided for a full-time or part-time (half-time or more) ~~permanent~~ career, trainee or probationary employee who is in pay status for one-half of the regularly scheduled workdays and holidays in a pay period.

(b) Leave for part-time employees shall be computed as a percentage of total amount provided to a full-time employee.

(c) In addition, vacation leave in excess of 240 hours on December 31 of each year shall be converted to sick leave.

Statutory Authority G.S. 126-4; 126-8.

.0314 SICK LEAVE WITHOUT PAY

~~(a) Sick leave shall be exhausted before going on leave without pay for extended illness. The employee may also exhaust vacation leave or may retain part or all of accumulated vacation leave. While exhausting leave, all benefits for which the employee is entitled are credited.~~

~~(b) Sick~~ Eligible employees shall be granted leave in accordance with 25 NCAC 1E .1400, Family and Medical Leave for a period of 12 workweeks. Additional leave without pay up to one year may be granted by the agency head for the remaining period of disability after ~~sick leave has been exhausted~~ the 12-week period in accordance with the provisions of 25 NCAC 1E .1100, Other Leaves Without Pay. Extension of sick leave without pay beyond one year shall be managed by and documented by the agency head.

~~(c) Leave without pay will delay the salary increase anniversary date one pay period for each pay period the employee is on leave without pay over half the workdays in that pay period.~~

Statutory Authority G.S. 126-4.

SECTION .0700 - WORKER'S COMPENSATION LEAVE

.0706 RESPONSIBILITY OF EMPLOYEE AND EMPLOYER

(a) In accordance with G.S. 97-22 notice of an accident must be given to the employer by the employee or his/her representative as soon as possible.

(b) The agency is required by law to report the injury to the North Carolina Industrial Commission using the I.C. Form 19 within five days from knowledge of any claim that results in more than one day's absence from work or if medical expenses exceed ~~eight hundred dollars ($800.00)~~ two thousand dollars ($2,000.00).

(c) Responsibility for claiming compensation is on the injured employee. A claim must be filed by the employee through the agency/university with the North Carolina Industrial Commission within two years from the date of injury or knowledge thereof. Otherwise, the claim is barred by law.

Statutory Authority G.S. 97-22; 126-4.

.0707 USE OF LEAVE

(a) The Workers' Compensation law provides medical benefits and disability compensation including a weekly compensation benefit equal to 66⅔ percent of the employee's average weekly earnings up to a maximum established by the Industrial Commission each year. When an employee is injured, he must go on workers' compensation leave and receive the workers' compensation weekly benefit after the required waiting period required by G.S. 97-28. One of the following options may be chosen:

(1) Option 1: Elect to take sick or vacation leave during the required waiting period and then go on workers' compensation leave and begin drawing workers' compensation weekly benefits.

(2) Option 2: Elect to go on workers' compensation leave with no pay for the required waiting period and then begin drawing workers' compensation weekly benefits.

If the injury results in disability of more than a specified number of days, as indicated in G.S. 97-28, the workers' compensation weekly benefit shall be allowed from the date of disability. If this occurs in the case of an employee who elected to use leave during the waiting period, no adjustment shall be made in the leave used for these workdays.

(b) In either case, after the employee has gone on workers' compensation leave, the weekly benefit may be supplemented by the use of partial earned sick or vacation leave in accordance with a schedule published by the Office of State Personnel each year. Since the employee must receive the weekly benefit, this will provide an income approximately equal to the past practice of using 100 percent of sick or vacation leave.

(c) Compensatory time may be substituted for sick or vacation leave if applied within the time frames provided under the Hours of Work and Overtime Compensation Policy. (reference: 25 NCAC 1D, Section .1900, Rule .1928).

(d) If the employee has earned leave or compensatory time and chooses to use it while drawing the weekly benefit, it would be paid on a temporary payroll at the employee's hourly rate of pay. It is subject to State and Federal withholding taxes and Social Security, but not subject to retirement, just the same as other temporary pay.

(e) Unused leave may be retained for future use. ~~Note: If an employee has over 240 hours of vacation leave at the time an injury occurs, depending on the nature and time of the injury and the anticipated time out of work, he/she should be advised to exhaust leave in excess of the 240 hours - particularly if the injury occurs late in the year when it would possibly cause a loss of vacation at the end of the year.~~

(f) Employees injured on the job in a compensable accident who have returned to work, but continue to require medical or therapy visits to reach maximum medical improvement, shall not be charged leave for time lost from work for required medical or therapy treatment.

(g) ~~(f)~~ Employee Refusal of Coverage: Under certain circumstances an employee may elect to refuse workers' compensation benefits. If an employee refuses workers' compensation benefits for injuries resulting from an on the job injury a release statement, provided by the agency, must be signed by the employee. Unless there is a signed release statement an employee who loses time from work as a result of an on the job injury must be placed under the workers' compensation leave policy.

Statutory Authority G.S. 97-28; 126-4.

.0708 CONTINUATION OF BENEFITS

While on workers' compensation leave an employee is eligible for continuation of the following benefits:

(1) Performance Increase: Upon reinstatement, an employee's salary will be computed based on the last salary plus any legislative increase to which he is entitled. Any performance increase which would have been given had the employee been at work may also be included in the reinstatement salary, or it may be given on any payment date following reinstatement.

(2) Vacation and Sick Leave: While on workers' compensation leave, the employee will continue to accumulate vacation and sick leave to be credited to his account for use upon return. If the employee does not return, vacation and sick leave accumulated during the first 12 months of leave will be paid in a lump sum along with other unused vacation.

(3) Since the employee is on workers' compensation leave and is not able to schedule vacation time off, the accumulation may in some cases exceed the 240 hours and shall be handled as follows:

(a) The 240-hour maximum to be carried forward to the next calendar year may be exceeded by the amount of vacation accumulated during workers' compensation leave. The excess may be used after returning to work or carried on the leave account until the end of the calendar year ~~following a full year after the employee's return to work~~ at which time any excess vacation shall be converted to sick leave.

(b) If the employee separates during the period that excess vacation is allowed, the excess leave to be paid in a lump sum may not exceed the amount accumulated during the first 12 months of workers' compensation leave.

(4) Hospitalization Insurance: While on workers' compensation leave, an employee is in pay status and will continue coverage under the state's health insurance program. Monthly premiums for the employee will be paid by the state. Premiums for any dependent coverage must be paid directly by the employee.

(5) Retirement Service Credit: While on workers' compensation leave an employee does not receive retirement credit. As a member of the Retirement System, the employee may purchase credits for the period of time on an approved leave of absence. Upon request by the employee,

the Retirement System will provide a statement of the cost and a date by which purchase must be made. If purchase is not made by that date, the cost will have to be recomputed.

(6) Longevity: While on workers' compensation leave an employee is in pay status and will continue to receive longevity credit. Employees who are eligible for longevity pay shall receive their annual payments.

Statutory Authority G.S. 126-4.

.0709 RETURN TO WORK

When an employee, who has been injured on the job and placed on workers' compensation leave, has been released to return to work by the treating physician, there are three possible return to work situations.

(1) When an employee who is on workers' compensation leave, has reached maximum medical improvement and has been released to return to work by the treating physician, the agency shall return the employee to the ~~original position he~~ same position or one of like seniority, status and pay held prior to workers' compensation leave.

(2) When an employee who has not reached maximum medical improvement is ready to return to limited work duty with approval of the treating physician but retains some disability which prevents successful performance in the original position, the agency shall provide work reassignment suitable to the employee's capacity which is both meaningful and productive and advantageous to the employee and the agency. This work reassignment shall be a temporary assignment and shall not exceed 90 days without approval from the agency personnel officer. When the employee reaches maximum medical improvement the agency shall return the employee to the ~~original position~~ same position or one of like seniority, status and pay held prior to workers' compensation leave.

(3) When an employee has received a disability which prohibits employment in his previous position and has reached maximum medical improvement and been released to return to work by the treating physician the agency shall attempt to place the employee in another position suitable to the employee's capacity which is both meaningful and productive and advantageous to the employee and the agency. This work placement may be a permanent assignment or either a part-time or temporary assignment until a permanent assignment is found.

(a) If a position is not available for work placement, the agency shall appoint the employee to the first suitable vacancy which occurs. During the interim period in which a suitable vacancy is not available, the employee shall be referred to the Office of State Personnel for reemployment assistance and a possible return to work in another agency.

(b) Work placement efforts will continue for a period not to exceed 12 months, except with the approval of the agency personnel officer. ~~Any time an employee has reached maximum medical improvement and is taken off workers' compensation leave but a position is not available the employee shall be placed in leave without pay status. While in leave without pay status the employee may make arrangements to continue coverage under the state's health insurance plan. The employee is responsible for paying the total premium cost.~~

(c) Vocational Rehabilitation Assistance. In some cases the extent of disability may be such that vocational rehabilitation will be necessary. If so, the agency will be responsible for making the necessary arrangements with the North Carolina Division of Vocational Rehabilitation for such training which may be necessary to assist the employee to obtain suitable employment consistent with his performance capabilities.

Statutory Authority G.S. 126-4.

.0710 REFUSAL OF SUITABLE EMPLOYMENT

The Workers' Compensation Act prevents employers from firing or demoting employees in retaliation for pursuing remedies under the Act but does not speak to reemployment after an employee has been released by the treating physician to

return to work. If an employee who has been on workers' compensation leave has reached maximum medical improvement and been released to return to work by the treating physician refuses suitable employment in keeping with his capability, the employer has the right to request stop payment of compensation and implement dismissal procedures.

Statutory Authority G.S. 126-4.

SECTION .1100 - OTHER LEAVES WITHOUT PAY

.1102 MAXIMUM AMOUNT

Leave without pay normally shall not exceed ~~12~~ six months, but may be extended based on individual circumstances. Any leave longer than 12 months should be agreed upon by the agency head and the State Personnel Director. Leave Without Pay for military purposes is covered under Military Leave, Section .0800 of this Subchapter. Leave without pay for employees receiving Worker's Compensation Benefits is described in Section .0700 of this Subchapter. Parental leave without pay for employees eligible for family and medical leave is covered under Family and Medical Leave, Section .1400 of this Subchapter. Parental leave without pay for employees not eligible for family and medical leave is covered at the end of this Subchapter.

Statutory Authority G.S. 126-4.

.1105 RETENTION OF BENEFITS

(a) The employee shall retain all accumulated unused sick leave, retirement status, and time earned toward the next annual salary increase. Eligibility to accumulate leave and time toward salary increases ceases on the date leave without pay begins.

(b) Accumulated vacation leave may be exhausted before going on leave without pay, or the employee may choose to retain part or all of accumulated leave until return to state service. Exceptions:

(1) if an employee has accumulated vacation leave, all vacation leave must be exhausted before going on leave without pay for vacation purposes; or

(2) if an employee requests leave for personal reasons for a period not to exceed 10 work days, vacation leave must be used if available; however, if the leave is for a period longer than 10 work days, the employee may choose to use vacation leave or retain it for future use. If leave without pay extends through December 31, any vacation leave accumulation above 240 hours shall be ~~cancelled~~ converted to sick leave.

When exhausting leave the employee continues to earn leave, is eligible to take sick leave, is entitled to holidays, and is eligible for salary increases during that period. If the employee does not return to work following leave without pay, the employee shall be paid for any accumulated vacation leave at time of separation. (Reference: 25 NCAC 1E .0200, Vacation Leave).

(c) While on leave without pay the employee may continue coverage under the state's health insurance program by paying the full premium cost (no contribution by the state).

Statutory Authority G.S. 126-4.

.1110 SPECIAL PROV/PARENTAL LEAVE/EMPLOYEES NOT ELGBLE/FAMILY/MED LEAVE

(a) The natural parents of a newborn infant and the parents of a newly-adopted child under five years of age may request leave without pay under provisions of this ~~policy~~ Subchapter. The natural mother may use accumulated sick leave for the actual period of temporary disability caused or contributed to by pregnancy and childbirth; see "Uses of Sick Leave" in Rule .0305 of this Subchapter.

(b) The agency head shall grant leave without pay to the natural mother for all of the time of personal disability not covered by sick leave (either because the employee has exhausted all sick leave or prefers to retain it). Since there is no certainty as to when disability actually begins and ends, a doctor's certificate shall be required verifying, on a prescribed form, the employee's period of temporary disability. ~~Limitation of employment before childbirth is prohibited; therefore, based on the type and nature of work performed each agency shall be responsible for determining, in consultation with the employee and upon advice she has received from her physician, how far into pregnancy she may continue to work before going on leave and when she is able to return to work.~~

(c) The natural mother may desire to be on leave from work prior to and/or after the time of actual disability. Leave without pay may be granted for this purpose under the provisions of

this ~~policy~~ Subchapter.

(d) Leave without pay for the parent of an adopted child can begin no earlier than one week prior to the date the parent receives custody of the child.

Statutory Authority G.S. 126-4.

SECTION .1300 - VOLUNTARY SHARED LEAVE PROGRAM

.1306 LEAVE ACCOUNTING PROCEDURES

The following conditions shall control the accounting and usage procedures for leave donations in this program:

(1) To facilitate the administration of the program, the agency may establish a specific time period during which leave can be donated.

(2) Each agency shall establish a system of leave accountability which will accurately record leave donations and recipients' use. Such accounts shall provide a clear and accurate record for financial and management audit purposes.

(3) Withdrawals from recipient's leave account will be charged to the recipient's account according to usual leave policies.

(4) Leave transferred under this program will be available for use on a current basis or may be retroactive for up to 30 calendar days to substitute for leave without pay or advanced vacation or sick leave already granted to the leave recipient.

(5) At the expiration of the medical condition, as determined by the agency, any unused leave in the recipient's donated leave account shall be treated as follows:

(a) The vacation and sick leave account balance shall not exceed a combined total of 40 hours (prorated for part-time employees).

(b) Any additional unused donated leave will be returned to the donor(s) on a pro rata basis and credited to the leave account from which it was donated. Fraction(s) of one hour shall not be returned to an individual donor.

(c) Each approved medical condition shall stand alone and donated leave not used for each approved incident shall be returned to the donor(s). Employees who donate "excess" leave (any amount above the 240 maximum allowable carryover) at the end of December may not have it returned and converted to sick leave. ~~Their prorated share will be lost the same as it would have been at the end of December.~~

(6) If a recipient separates from state government, participation in the program ends. Donated leave shall be returned to the donor(s) on a pro rata basis.

Statutory Authority G.S. 126-4.

SECTION .1400 - FAMILY AND MEDICAL LEAVE

.1402 ELIGIBLE EMPLOYEES

(a) Permanent Employees - An employee who has been employed with State government for at least 12 months and who has worked at least 1040 hours (half-time) during the previous 12 month period is entitled to a total of 12 workweeks, paid or unpaid, leave during any 12-month period for one or more of the reasons listed in this Paragraph. ~~A workweek is defined as the number of hours an employee is regularly scheduled to work each week.~~ The 12-month period is computed by counting back 12 months from the date the leave begins.

(1) For the birth of a child and to care for the child after birth, provided the leave is taken within a 12-month period following birth;

(2) For the employee to care for a child placed with the employee for adoption, provided the leave is taken within a 12-month period following adoption;

(3) For the employee to care for the employee's child, spouse, or parent, where that child, spouse, or parent has a serious health condition; or

(4) Because the employee has a serious health condition that makes the employee unable to perform the functions of the employee's position.

Leave without pay beyond the 12-week period or for employees not covered under this Section will be administered under 25 NCAC 1E .1100 Other Leaves Without Pay. Under these provisions, employees must pay for health benefits coverage.

(b) Temporary Employees - This Section does not cover temporary employees since the maximum length of a temporary appointment is one year; however, if, by exception, a temporary employee is extended beyond one year, the employee would be covered if they had worked at

least 1250 hours during the past 12-month period. Any leave granted to a temporary employee would be without pay. This also applies to any other type of appointment that is not permanent, including intermittent, if the employee worked at least 1250 hours during the previous 12-month period.

Statutory Authority G.S. 126-4(5); P.L. 103-3.

.1403 DEFINITIONS

(a) Parent - a biological or adoptive parent or an individual who stood in loco parentis (a person who is in the position or place of a parent) to an employee when the employee was a child.

(b) Child - is a son or daughter who is under 18 years of age or is 18 years of age or older and incapable of self-care because of a mental or physical disability who is:

(1) a biological child;

(2) an adopted child;

(3) a foster child - a child for whom the employee performs the duties of a parent as if it were the employee's child;

(4) a step-child - a child of the employee's spouse from a former marriage;

(5) a legal ward - a minor child placed by the court under the care of a guardian;

(6) a child of an employee standing in loco parentis.

(c) Spouse - a husband or wife.

(d) Serious health condition:

(1) an illness, injury, impairment, or physical or mental condition that involves either inpatient care in a hospital, hospice, or residential medical care facility, or that involves continuing treatment by a health care provider~~.~~;

(2) any period of incapacity requiring absence from work of more than three calendar days that also involves continuing treatment by a health care provider;

(3) continuing treatment by a health care provider for conditions so serious that, if not treated, would likely result in an absence of more than three calendar days. Prenatal care is also included. The period of actual physical disability associated with childbirth is considered a serious health condition and must be taken as family/medical leave, whether as paid or unpaid leave.

(e) Workweek - The number of hours an employee is regularly scheduled to work each week.

(f) Reduced Work Schedule - A work schedule involving less hours than an employee is normally scheduled to work.

(g) Intermittent Work Schedule - A work schedule in which an employee works on an irregular basis and is taking leave in separate blocks of time, rather than for one continuous period of time, usually to accommodate some form of regularly scheduled medical treatment.

Statutory Authority G.S. 126-4(5); P.L. 103-3.

.1404 LEAVE CHARGES

(a) It is the responsibility of the agency to designate leave, paid or unpaid, as family and medical leave, based on information provided by the employee. This must be done before the leave starts, or before an extension of leave is granted if the employee is already on leave. If an employee on paid leave has not provided information sufficient to determine whether it is to be designated as family and medical leave, the agency shall, after a period of 10 workdays, request that the employee provide sufficient information to establish a family and medical leave-qualifying reason for the needed leave. This does not preclude the agency from requesting the information sooner, at any time an extension is requested. If an employee takes paid leave and it is not designated as family and medical leave, the leave taken does not count against the employee's entitlement. The employee has the following options for charging leave:

(1) ~~(a)~~ For the birth of a child, the employee may choose to exhaust available vacation or sick leave, or any portion, or go on leave without pay; except that sick leave may be used during the period of disability. This applies to both parents.

(2) ~~(b)~~ For the adoption of a child, the employee may choose to exhaust vacation leave, or any portion, or go on leave without pay.

(3) ~~(c)~~ For the illness of an employee's child, spouse, or parent, the employee may choose to exhaust available sick or vacation leave, or any portion, or go on leave without pay.

(4) ~~(d)~~ For the employee's illness, the employee shall exhaust available sick and may choose to exhaust available vacation leave, or any portion, before

going on leave without pay. If the illness extends beyond the 60-day waiting period required for short-term disability, the employee may choose to exhaust the balance of available leave or begin drawing short-term disability benefits.

(b) ~~(c)~~ Periods of paid leave and periods of leave without pay (including leave without pay while drawing short-term disability benefits) count towards the 12 workweeks to which the employee is entitled. This includes leave taken under the Voluntary Shared Leave Rules (25 NCAC 1E .1300).

Statutory Authority G.S. 126-4(5); P.L. 103-3.

.1405 INTERMITTENT LEAVE OR REDUCED WORK SCHEDULE

(a) The employee may not take leave intermittently or on a reduced work schedule for child birth and birth related child care or for adoption unless the employee and agency agree otherwise.

(b) When medically necessary, the employee may take leave intermittently or on a reduced schedule to care for the employee's child, spouse, or parent who has a serious health condition, or because the employee has a serious health condition. There is no minimum limitation on the amount of leave taken intermittently. If such leave is foreseeable, based on planned medical treatment, the agency may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits and better accommodates recurring periods of leave.

~~(c) When an employee is on a reduced work schedule, the time not worked is counted against the total 12 workweeks.~~

(c) Only the time actually taken as leave may be counted toward the 12 weeks of leave to which the employee is entitled when leave is taken intermittently or on a reduced leave schedule. If the employee works a reduced or intermittent work schedule and does not use paid leave to make up the difference between the normal work schedule and the new temporary schedule to bring the number of hours worked up to the regular schedule, the agency must submit a Form PD-105 showing a change in the number of hours the employee is scheduled to work. This will result in an employee earning leave at a reduced rate.

Statutory Authority G.S. 126-4(5); P.L. 103-3.

.1406 EMPLOYEE RESPONSIBILITY

(a) The employee shall ~~apply in writing~~ give notice to the supervisor for leave requested under this Section. ~~as follows:~~ The employee must explain the reasons for the needed leave so as to allow the agency to determine that the leave qualifies under this Section.

(1) Birth or adoption - The employee shall give the agency no less than 30 days' notice, in writing, of the intention to take leave, subject to the actual date of the birth or adoption. If the date of the birth or adoption requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(2) Planned Medical Treatment - When the necessity for leave is to care for the employee's child, spouse or parent or because the employee has a serious health condition, the employee must give 30 day's notice if practicable of the intention to take leave.

~~(b) The employee shall be deemed to have applied for leave under this Section when:~~

~~(1) the employee is on approved leave but has not given written notice to the supervisor;~~

~~(2) the employee utilizes leave for any purpose whether with or without pay for a period in excess of 30 days; and~~

~~(3) the basis for the leave falls within the scope of this Section.~~

~~In these cases, the agency shall notify the employee that time spent on paid leave or leave without pay during the 30 day period is a part of the 12 workweeks of leave.~~

(b) ~~(c)~~ If the employee will not return to work, the agency shall be notified in writing. Failure to report at the expiration of the leave, unless an extension has been requested, may be considered as a resignation.

Statutory Authority G.S. 126-4(5); P.L. 103-3.

.1408 EMPLOYMENT AND BENEFITS PROTECTION

(a) Reinstatement - The employee shall be reinstated to the same position held when the leave began or one of like pay grade, pay, benefits, and other conditions of employment. The agency may require the employee to report at reasonable intervals to the employer on the employee's status and intention to return to work. The agency also may require that the employee receive certification

that the employee is able to return to work.

(b) Benefits - The employee shall be reinstated without loss of benefits accrued when the leave began. All benefits accrue during any period of paid leave; however, no benefits will be accrued during any period of leave without pay.

(c) Health Benefits - The State shall maintain coverage for the employee under the State's group health plan for the duration of leave at the level and under the conditions coverage would have been provided if the employee had continued employment. Any share of health plan premiums which an employee had paid prior to leave must continue to be paid by the employee during the leave period. The obligation to maintain health insurance coverage stops if an employee's premium payment is more than 30 days late. If the employee's failure to make the premium payments leads to a lapse in coverage, the employer must still restore the employee, upon return to work, to the health coverage equivalent to that the employee would have had if leave had not been taken and the premium payments had not been missed. In this situation, an employee may not be required to meet qualification requirements imposed by the plan, to wait for open season or to pass a medical examination to obtain reinstatement of coverage. The agency may recover the premiums if the employee fails to return after the period of leave to which the employee is entitled has expired for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the employee's control.

Statutory Authority G.S. 126-4(5); P.L. 103-3.

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).

ADMINISTRATION

Department of Administration's Minimum Criteria

1 NCAC 39 .0101 - Purpose	*RRC Objection*	*06/17/93*
No Response from Agency	*Obj. Cont'd*	*07/15/93*
1 NCAC 39 .0301 - Exceptions to Minimum Criteria	*RRC Objection*	*06/17/93*
No Response from Agency	*Obj. Cont'd*	*07/15/93*

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Environmental Management

15A NCAC 2H .1110 - Implementation	*RRC Objection*	*02/18/93*
Agency Responded	*Obj. Cont'd*	*03/18/93*
Agency Responded	*Obj. Cont'd*	*05/19/93*
Agency Responded	*Obj. Cont'd*	*06/17/93*
Agency Responded	*Obj. Cont'd*	*07/15/93*

LICENSING BOARDS AND COMMISSIONS

Landscape Architects

21 NCAC 26 .0203 - General Obligations of Practice: Mandatory Standards	*RRC Objection*	*06/17/93*
Agency Repealed Rule	*Obj. Removed*	*06/17/93*
21 NCAC 26 .0205 - Forms of Practice	*RRC Objection*	*06/17/93*
Rule Returned to Agency		*07/15/93*
21 NCAC 26 .0207 - Application of Professional Seal	*RRC Objection*	*06/17/93*
Rule Returned to Agency		*07/15/93*
21 NCAC 26 .0208 - Improper Conduct	*RRC Objection*	*06/17/93*
Rule Returned to Agency		*07/15/93*
21 NCAC 26 .0209 - Unprofessional Conduct	*RRC Objection*	*06/17/93*
Agency Revised Rule	*Obj. Removed*	*07/15/93*
21 NCAC 26 .0210 - Dishonest Practice	*RRC Objection*	*06/17/93*
Agency Revised Rule	*Obj. Removed*	*07/15/93*
21 NCAC 26 .0211 - Incompetence	*RRC Objection*	*06/17/93*
Agency Revised Rule	*Obj. Removed*	*07/15/93*
21 NCAC 26 .0301 - Examination	*RRC Objection*	*06/17/93*
Agency Revised Rule	*Obj. Removed*	*07/15/93*

Social Work

21 NCAC 63 .0210 - Provisional Certificates	*RRC Objection*	*08/20/93*
Agency Revised Rule	*RRC Objection*	*08/20/93*

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

1 NCAC 5A .0010 - ADMINISTRATIVE PROCEDURES

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared two portions of Rule 1 NCAC 5A .0010 void as applied in *Stauffer Information Systems, Petitioner v. The North Carolina Department of Community Colleges and The North Carolina Department of Administration, Respondent and The University of Southern California, Intervenor-Respondent* (92 DOA 0666).

10 NCAC 3H .0315(b) - NURSING HOME PATIENT OR RESIDENT RIGHTS

Dolores O. Nesnow, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3H .0315(b) void as applied in *Barbara Jones, Petitioner v. North Carolina Department of Human Resources, Division of Facility Services, Licensure Section, Respondent* (92 DHR 1192).

10 NCAC 3R .1124(f) - ACCESSIBILITY TO SERVICES

Beecher R. Gray, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .1124(f) void as applied in *Britthaven, Inc. d/b/a Britthaven of Morganton, Petitioner v. N.C. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Respondent and Valdese Nursing Home, Inc., Respondent-Intervenor* (92 DHR 1785).

15A NCAC 3O .0201(a)(1)(A) - STDS FOR SHELLFISH BOTTOM & WATER COLUMN LEASES

Julian Mann III, Chief Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 3O .0201(a)(1)(A) void as applied in *William R. Willis, Petitioner v. North Carolina Division of Marine Fisheries, Respondent* (92 EHR 0820).

15A NCAC 19A .0202(d)(10) - CONTROL MEASURES - HIV

Brenda B. Becton, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 19A .0202(d)(10) void as applied in *ACT-UP TRIANGLE (AIDS Coalition to Unleash Power Triangle), Steven Harris, and John Doe, Petitioners v. Commission for Health Services of the State of North Carolina, Ron Levine, as Assistant Secretary of Health and State Health Director for the Department of Environment, Health, and Natural Resources of the State of North Carolina, William Cobey, as Secretary of the Department of Environment, Health, and Natural Resources of the State of North Carolina, Dr. Rebecca Meriwether, as Chief, Communicable Disease Control Section of the North Carolina Department of Environment, Health, and Natural Resources, Wayne Bobbitt Jr., as Chief of the HIV/STD Control Branch of the North Carolina Department of Environment, Health, and Natural Resources, Respondents* (91 EHR 0818).

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
ADMINISTRATION				
LMS Express, Inc. v. Administration, Div of Purchase & Contract	92 DOA 0735	Morgan	06/04/93	
Stauffer Information Systems v. Community Colleges & Administration	92 DOA 0803	West	06/10/93	8:7 NCR 613
McLaurin Parking Co. v. Administration	92 DOA 1662	Morrison	04/02/93	8:3 NCR 320
Warren H. Arrington Jr. v. Division of Purchase & Contract	93 DOA 0132	West	07/21/93	
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Alcoholic Beverage Control Comm. v. Ann Oldham McDowell	92 ABC 0260	Morgan	04/01/93	
Curtis Ray Lynch v. Alcoholic Beverage Control Comm.	92 ABC 0288	Gray	05/18/93	
Alcoholic Beverage Control Comm. v. Ezra Everett Rigsbee	92 ABC 0702	West	07/30/93	
Alcoholic Beverage Control Comm. v. Partnership, Phillip Owen Edward	92 ABC 0978	Gray	05/28/93	
Alcoholic Beverage Control Comm. v. Gary Morgan Neugent	92 ABC 1086	Becton	03/22/93	
Alcoholic Beverage Control Comm. v. Kirby Ronald Eldridge	92 ABC 1153	Chess	04/26/93	
Alcoholic Beverage Control Comm. v. Gloria Black McDuffie	92 ABC 1476	West	05/26/93	
Alcoholic Beverage Control Comm. v. Larry Isaac Hailstock	92 ABC 1483	Reilly	04/07/93	
Alcoholic Beverage Control Comm. v. Anthony Ralph Cecchini Jr.	92 ABC 1690	Morgan	06/29/93	
Johnnie L. Baker v. Alcoholic Beverage Control Commission	92 ABC 1735	Chess	05/07/93	
RAMSAC Enterprises, Inc. v. Alcoholic Beverage Control Comm.	93 ABC 0002	Morrison	07/02/93	
Alcoholic Beverage Control Comm. v. Aubrey Rudolph Wallace	93 ABC 0047	Gray	05/28/93	
Alcoholic Beverage Control Comm. v. Mermaid, Inc.	93 ABC 0076	Gray	08/04/93	
Alcoholic Beverage Control Comm. v. Majdi Khalid Wahdan	93 ABC 0087	Becton	07/06/93	8:9 NCR 785
Cornelius Hines T/A Ebony Lounge v. Alcoholic Beverage Ctl. Comm.	93 ABC 0118	Morrison	08/04/93	
Alcoholic Beverage Control Comm. v. Homer Patrick Godwin Jr.	93 ABC 0125	Reilly	05/13/93	
Alcoholic Beverage Control Comm. v. Wanda Lou Ball	93 ABC 0182	Nesnow	07/29/93	
Charles Anthonious Morant v. Alcoholic Beverage Control Comm.	93 ABC 0232	Chess	07/20/93	
ABC Comm. v. Partnership/T/A Corrothers Comty Ctr & Private Club	93 ABC 0318	Reilly	07/22/93	
Alcoholic Beverage Control Comm. v. James William Campbell	93 ABC 0327	Gray	08/09/93	
Charles Edward Hare, Club Paradise v. Alcoholic Beverage Ctl. Comm.	93 ABC 0644	Gray	08/10/93	
Alcoholic Bev. Control Comm. v. Mild & Wild, Inc., Sheila Scholz	93 ABC 1475	Nesnow	03/23/93	
COMMERCE				
Lester Moore v. Weatherization Assistance Program	93 COM 0105	Gray	03/08/93	
CRIME CONTROL AND PUBLIC SAFETY				
George W. Paylor v. Crime Victims Compensation Comm.	91 CPS 1286	Morgan	04/27/93	
Steven A. Barner v. Crime Victims Compensation Comm.	92 CPS 0453	Nesnow	06/01/93	
Anthony L. Hart v. Victims Compensation Comm.	92 CPS 0937	Chess	03/01/93	
Jennifer Ayers v. Crime Victims Compensation Comm.	92 CPS 1195	Reilly	03/19/93	
Janie L. Howard v. Crime Victims Compensation Comm.	92 CPS 1787	Reilly	03/26/93	
Isabelle Hyman v. Crime Victims Compensation Comm.	92 CPS 1807	Morrison	05/24/93	
James G. Pellom v. Crime Control & Public Safety	93 CPS 0034	Gray	05/05/93	
Norman E. Brown v. Victims Compensation Commission	93 CPS 0141	West	07/07/93	
Moses H. Cone Mem Hosp v. Victims Compensation Comm.	93 CPS 0152	Nesnow	04/02/93	8:3 NCR 327
David & Jane Spano v. Crime Control & Public Safety	93 CPS 0160	Nesnow	07/30/93	8:10 NCR 862
Phillip Edward Moore v. Crime Control & Public Safety	93 CPS 0169	Nesnow	05/20/93	
John Willie Leach v. Crime Victims Compensation Comm.	93 CPS 0263	Morrison	05/20/93	
Nellie R. Mangum v. Crime Victims Compensation Comm.	93 CPS 0303	Morrison	06/08/93	
Constance Brown v. Crime Victims Compensation Comm.	93 CPS 0351	Reilly	05/24/93	

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
ENVIRONMENT, HEALTH, AND NATURAL RESOURCES				
Charles L. Wilson v. Environment, Health, & Natural Resources	91 EHR 0664	Morgan	03/23/93	
J. Bruce Mulligan v. Environment, Health, & Natrual Resources	91 EHR 0773	West	07/13/93	
Michael D. Barnes v. Onslow Cty Hlth & Environment and EHR	91 EHR 0825	Morgan	06/21/93	
William E. Finck v. Environment, Health, & Natural Resources	92 EHR 0040	Gray	06/14/93	
Utley C. Stallings v. Environment, Health, & Natural Resources	92 EHR 0062	Gray	03/15/93	
Safeway Removal, Inc. v. Environment, Health, & Natural Res.	92 EHR 0826	West	03/12/93	8:1 NCR 83
Elizabeth City/Pasquotank Cty Mun Airport Auth v. EHNR	92 EHR 1140	Gray	04/13/93	
Interstate Brands Corp & Donald Leffew v. Env., Health, & Nat. Res.	92 EHR 1201*[1]	Reilly	08/12/93	
Service Oil Company v. Environment, Health, & Natural Resources	92 EHR 1205	Reilly	05/27/93	
Interstate Brands Corp & Donald Leffew v. Env., Health, & Nat. Res.	92 EHR 1224*[1]	Reilly	08/12/93	
City of Salisbury v. Environment, Health, & Natural Resources	92 EHR 1472	Morrison	04/22/93	
Willie M. Watford v. Hertford Gates District Health Department	92 EHR 1600	Chess	03/24/93	
Standard Speciality Contractors, Inc. v. EHNR	92 EHR 1660	Reilly	05/21/93	
Shawqi A. Jaber v. Environment, Health, & Natural Resources	92 EHR 1784	Becton	07/07/93	
Angela Power, Albert Power v. Children's Special Health Svcs.	93 EHR 0008	Becton	03/24/93	
Erby Lamar Grainger v. Environment, Health, & Natural Resources	93 EHR 0071	Reilly	06/21/93	
Mustafa E. Essa v. Environment, Health, & Natural Resources	93 EHR 0146	Gray	03/29/93	
Charlie Garfield McPherson Swine Farm v. Env., Health, & Nat. Res.	93 EHR 0181	Reilly	07/23/93	8:10 NCR 870
Rosetta Brimage, Vanessa Pack v. Env. Health of Craven County	93 EHR 0206	Nesnow	05/20/93	
R.L. Stowe Mills, Inc. v. Environment, Health, & Natural Resources	93 EHR 0219	Morrison	08/11/93	8:11 NCR 996
O.C. Stafford/Larry Haney v. Montgomery Cty. Health Dept.	93 EHR 0224	Gray	06/07/93	
Bobby Anderson v. Environment, Health, & Natural Resources	93 EHR 0299	Reilly	06/07/93	
Shell Bros. Dist., Inc. v. Environment, Health, & Natural Resources	93 EHR 0308	Becton	05/18/93	
Fred C. Gosnell & wife, Patricia T. Gosnell v. Env., Health, & Nat. Res.	93 EHR 0340	Becton	08/11/93	
Holding Bros., Inc. v. Environment, Health, & Natural Resources	93 EHR 0380	Nesnow	08/03/93	8:11 NCR 1001
Hamilton Beach/Proctor-Silex, Inc. v. Environment, Health, & Natrl Res	93 EHR 0477	Reilly	06/29/93	
HUMAN RESOURCES				
O.C. Williams v. Human Resources	91 CSE 0036*[2]	Morgan	03/30/93	
Ronald Terry Brown v. Human Resources	91 CSE 0249	Morgan	05/17/93	
Dennis K. King v. Human Resources	91 CSE 1122	Morgan	07/28/93	
O.C. Williams v. Human Resources	91 CSE 1158*[2]	Morgan	03/30/93	
Michael L. Ray v. Human Resources	91 CSE 1173	Morgan	05/17/93	
Randy Chambliss v. Human Resources	91 CSE 1187	Morgan	04/28/93	
Melvin White v. Human Resources	91 CSE 1192	Morgan	05/17/93	
Joseph R. Kavaliauskas Jr. v. Human Resources	91 CSE 1204	Morgan	07/29/93	
Jefferson D. Boylen v. Human Resources	91 CSE 1217	Morgan	05/17/93	
Jeffery D. Williams v. Human Resources	91 CSE 1231	Morgan	04/28/93	
Jerry L. Summers v. Human Resources	91 CSE 1234	Morgan	07/28/93	
Samuel E. Massenberg Jr. v. Human Resources	91 CSE 1249	Morgan	05/17/93	
William A. Dixon v. Human Resources	91 CSE 1277	Morrison	03/04/93	
Gregory L. Washington v. Human Resources	92 CSE 0075	Morgan	04/01/93	
Edwin Clarke v. Human Resources	92 CSE 0129	Morgan	05/17/93	
Dwayne Allen v. Human Resources	92 CSE 0196	Morgan	03/31/93	
Edwin Ivester v. Human Resources	92 CSE 0268	Nesnow	03/30/93	
Connie F. Epps, Otis Junior Epps v. Human Resources	92 CSE 1182	Reilly	07/22/93	
Tyrone Aiken v. Human Resources	92 CSE 1217	Gray	06/17/93	
Everett M. Eaton v. Human Resources	92 CSE 1221	Reilly	07/27/93	
Edward E. Brandon v. Human Resources	92 CSE 1237	Gray	04/16/93	
Darrell W. Russell v. Human Resources	92 CSE 1249	Becton	04/20/93	
John Henry Byrd v. Human Resources	92 CSE 1250	Reilly	06/04/93	
Michelle D. Mobley v. Human Resources	92 CSE 1256	Nesnow	04/15/93	
Gus W. Long Jr. v. Human Resources	92 CSE 1263	Gray	08/16/93	
Robert E. Watson v. Human Resources	92 CSE 1265	Reilly	05/06/93	
Byron Christopher Williams v. Human Resources	92 CSE 1270	Nesnow	04/26/93	
James W. Bell v. Human Resources	92 CSE 1311	Nesnow	05/10/93	
Charles W. Stall Jr. v. Human Resources	92 CSE 1313	Mann	07/06/93	
Eric Stanley Stokes v. Human Resources	92 CSE 1316*[3]	Reilly	03/25/93	
Frank E. Johnson v. Human Resources	92 CSE 1326	Reilly	08/16/93	
David Rollins v. Human Resources	92 CSE 1334	Morrison	05/06/93	
Lyndell Greene v. Human Resources	92 CSE 1346	Nesnow	04/16/93	

* Consolidated cases.

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
Michael Anthony Dean v. Human Resources	92 CSE 1356	Morrison	08/13/93	
Leroy Snuggs v. Human Resources	92 CSE 1360	Morrison	04/15/93	
James P. Miller III v. Human Resources	92 CSE 1361	Gray	04/16/93	
Herbert H. Fordham v. Human Resources	92 CSE 1362	Nesnow	07/19/93	
Jack Dulq v. Human Resources	92 CSE 1374	Gray	07/16/93	
Larry L. Crowder v. Human Resources	92 CSE 1396	Reilly	04/15/93	
Carlos Bernard Davis v. Human Resources	92 CSE 1404	Reilly	04/15/93	
Ocie C. Williams v. Human Resources	92 CSE 1405	Mann	06/25/93	
Terrance Freeman v. Human Resources	92 CSE 1411	Mann	06/07/93	
Timothy Brian Eller v. Human Resources	92 CSE 1414	Reilly	04/20/93	
Charles S. Ferrer v. Human Resources	92 CSE 1416	Mann	04/15/93	
Ronald H. Lockley v. Human Resources	92 CSE 1418	Nesnow	04/20/93	
Rene Thomas Rittenhouse v. Human Resources	92 CSE 1421	Nesnow	04/20/93	
Thomas Edward Williamson v. Human Resources	92 CSE 1422	Reilly	04/20/93	
Roy Chester Robinson v. Human Resources	92 CSE 1423	Reilly	04/15/93	
Timothy Scott Long v. Human Resources	92 CSE 1445	Becton	06/29/93	
David W. Williams v. Human Resources	92 CSE 1448	Nesnow	07/19/93	
William E. Ingram v. Human Resources	92 CSE 1450	Reilly	04/15/93	
Harold R. Pledger v. Human Resources	92 CSE 1455	Morrison	05/20/93	
Henry Alston Jr. v. Human Resources	92 CSE 1460	Becton	06/29/93	
Michael W. Bentley v. Human Resources	92 CSE 1512	Nesnow	06/09/93	
Dale Robert Stuhre v. Human Resources	92 CSE 1516	Reilly	05/11/93	
Tommy Malone v. Human Resources	92 CSE 1520	Mann	05/07/93	
James C. Dixon Jr. v. Human Resources	92 CSE 1522	Becton	05/11/93	
Wallace M. Cooper v. Human Resources	92 CSE 1527	Reilly	05/11/93	
Jarvis N. Price v. Human Resources	92 CSE 1531	Morrison	05/12/93	
Thomas L. Yates v. Human Resources	92 CSE 1535	Gray	05/10/93	
Robert E. Tarlton Sr. v. Human Resources	92 CSE 1536	Gray	05/17/93	
Rodney Devard Clemons v. Human Resources	92 CSE 1539	Gray	05/10/93	
James A. Coleman v. Human Resources	92 CSE 1540	Reilly	05/11/93	
Romeo F. Skapple v. Human Resources	92 CSE 1545	Gray	04/26/93	
Jeffrey L. Garrett v. Human Resources	92 CSE 1557	Gray	04/22/93	
Edward Kirk v. Human Resources	92 CSE 1560	Gray	06/29/93	
William C. Hubbard v. Human Resources	92 CSE 1562	Mann	05/12/93	
William Michael Przybysz v. Human Resources	92 CSE 1565	Becton	07/23/93	
Edward Fitch v. Human Resources	92 CSE 1572	Reilly	05/11/93	
David Robinette v. Human Resources	92 CSE 1573	Mann	07/14/93	
Kit C. Elmore v. Human Resources	92 CSE 1575	Gray	07/16/93	
Brian C. Gilmore v. Human Resources	92 CSE 1576	Gray	04/26/93	
Philip S. Piercy v. Human Resources	92 CSE 1577	Gray	07/16/93	
Anthony McLaughlin v. Human Resources	92 CSE 1582	Gray	06/29/93	
Johnny W. Cooke v. Human Resources	92 CSE 1585	Becton	05/11/93	
Roland L. Essaff v. Human Resources	92 CSE 1588	Morrison	07/26/93	
Isaac Maxwell v. Human Resources	92 CSE 1589	Reilly	04/26/93	
Donald J. Ray v. Human Resources	92 CSE 1592	Mann	05/19/93	
Charles Wayne Pierce v. Human Resources	92 CSE 1596	Morrison	07/14/93	
Donna G. Knotts v. Human Resources	92 CSE 1611	Morrison	07/16/93	
Donald R. Williams v. Human Resources	92 CSE 1622	Nesnow	08/04/93	
McKinley Clyburn v. Human Resources	92 CSE 1623	Morrison	05/20/93	
Tony Thorpe v. Human Resources	92 CSE 1625	Chess	07/15/93	
Jeffery D. Williams v. Human Resources	92 CSE 1626	Mann	05/19/93	
Ronald Sowell v. Human Resources	92 CSE 1627	Reilly	07/19/93	
Billy Smith v. Human Resources	92 CSE 1629	Reilly	03/25/93	
Anthony Curry v. Human Resources	92 CSE 1631	Reilly	03/25/93	
John G. Williams v. Human Resources	92 CSE 1632	Mann	08/10/93	
Larry W. Golden v. Human Resources	92 CSE 1633	Reilly	03/25/93	
William J. Carter v. Human Resources	92 CSE 1637	Nesnow	05/19/93	
Mark W. Dean v. Human Resources	92 CSE 1638	Reilly	07/15/93	
Tyrone Thomas v. Human Resources	92 CSE 1640	Mann	07/22/93	
Rilton E. May v. Human Resources	92 CSE 1642	Morgan	07/29/93	
Eric Stanley Stokes v. Human Resources	92 CSE 1652*[3]	Reilly	03/25/93	
Larry Thompson v. Human Resources	92 CSE 1655	Reilly	07/22/93	
Billie J. Smith v. Human Resources	92 CSE 1656	Gray	07/23/93	
Patrick Floyd v. Human Resources	92 CSE 1663	Reilly	05/20/93	
Dennis W. Nolan v. Human Resources	92 CSE 1670	Morrison	06/25/93	
Eric L. Garland v. Human Resources	92 CSE 1671	Mann	07/22/93	
Ira Alston Jr. v. Human Resources	92 CSE 1703	Becton	06/16/93	
Ronald G. Bolden v. Human Resources	92 CSE 1706	Mann	06/25/93	

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
Marvin Holley v. Human Resources	92 CSE 1713	Mann	06/08/93	
Eddie Short v. Human Resources	92 CSE 1714	West	07/15/93	
Michael Tywan Marsh v. Human Resources	92 CSE 1716	Gray	06/17/93	
Leroy Jones v. Human Resources	92 CSE 1718	Gray	06/17/93	
Joseph Eric Lewis v. Human Resources	92 CSE 1748	Becton	08/02/93	
Ronald Dean Lowery v. Human Resources	92 CSE 1771	West	07/15/93	
James E. Blakney v. Human Resources	92 CSE 1779	Nesnow	05/13/93	
Oswinn Blue v. Human Resources	93 CSE 0073	Chess	08/03/93	
Kelvin D. Jackson v. Human Resources	93 CSE 0221	West	08/04/93	
Linwood Staton v. Human Resources	93 CSE 0250	Nesnow	08/13/93	
Anthony Watson v. Human Resources	93 CSE 0396	Nesnow	08/04/93	
Barbara W. Catlett v. Human Resources	92 DCS 0577	West	03/15/93	
Laurel Langford v. Human Resources	92 DCS 1181	Gray	05/04/93	8:5 NCR 441
Ida Diane Davis v. Human Resources	92 DCS 1200	Gray	03/29/93	
Hatsuko Klein v. Human Resources	92 DCS 1271	Reilly	05/05/93	
Karen Mullins Martin v. Human Resources	92 DCS 1783	West	08/04/93	
Leon Barbee v. Human Resources	92 DHR 0658	Morrison	04/30/93	8:4 NCR 392
Carrolton of Dunn, Inc. v. Human Resources	92 DHR 1101	Morgan	07/26/93	
Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Cumberland County v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of Fayetteville d/b/a Fayetteville Kidney Center, Webb-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford and Webb-Lohavichan Rentals	92 DHR 1109*	Morgan	06/22/93	8:8 NCR 687
Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Cumberland County v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of Fayetteville d/b/a Fayetteville Kidney Center, Webb-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford and Webb-Lohavichan Rentals	92 DHR 1110*	Morgan	06/22/93	8:8 NCR 687
Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford, Webb-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Fayetteville d/b/a Fayetteville Kidney Center and Webb-Lohavichan Rentals v. Human Resources, Division of Facility Services, Certificate of Need Section and Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Hoke County	92 DHR 1116*	Morgan	06/22/93	8:8 NCR 687
Renal Care of Rocky Mount, Inc. v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Tarboro, Rocky Mount Nephrology Associates, Inc., Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Rocky Mount d/b/a Rocky Mount Kidney Center, and Rocky Mount Kidney Center Associates	92 DHR 1120	Gray	06/18/93	8:8 NCR 687
James H. Hunt Jr. v. Division of Medical Assistance	92 DHR 1145	Becton	05/13/93	8:5 NCR 443
Barbara Jones v. Human Resources	92 DHR 1192	Nesnow	04/02/93	8:3 NCR 313
Joyce P. Williams v. Human Resources	92 DHR 1275	Gray	03/15/93	
Snoopy Day Care, Diane Hamby v. Child Day Care Licensing	92 DHR 1320	Morgan	05/21/93	
Cynthia Reed v. Human Resources	92 DHR 1329	Chess	05/10/93	
The Neighborhood Center v. Human Resources	92 DHR 1375	Chess	08/02/93	
Helm's Rest Home, Ron J. Schimpf/Edith H. Wilson v. Human Resources	92 DHR 1604	Reilly	05/10/93	
Jo Ann Kinsey v. NC Memorial Hospital Betty Hutton, Volunteer Svc.	92 DHR 1612	Chess	03/08/93	
Amy Clara Williamson v. NC Mem Hosp Betty Hutton, Volunteer Svc.	92 DHR 1613	Chess	03/08/93	
Betty Butler v. Human Resources	92 DHR 1614	Chess	03/09/93	
Wayne Sanders and Brenda Sanders v. Human Resources	92 DHR 1699	Reilly	06/07/93	8:7 NCR 632
Samuel Benson v. Office of Admin. Hearings for Medicaid	93 DHR 0010	Becton	03/11/93	
Cabarrus Cty Dept. of Social Svcs. v. Human Resources	93 DHR 0373	Morgan	07/20/93	
Fannie Lewis v. Human Resources	93 DHR 0379	Gray	06/28/93	
Katie Kelly v. Human Resources	93 DHR 0441	Chess	07/26/93	
INSURANCE				
Carolyn M. Hair v. St Employees Comprehensive Major Medical	92 INS 1464	Chess	03/10/93	
Phyllis C. Harris v. Teachers' & St. Emp. Comp. Major Med. Plan	93 INS 0197	Nesnow	07/29/93	

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
JUSTICE				
Jennings Michael Bostic v. Sheriffs' Ed. & Traning Stds. Comm.	92 DOJ 0656*[7]	West	06/22/93	
Colin Carlisle Mayers v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 0761	Morrison	05/10/93	
Jennings Michael Bostic v. Sheriffs' Ed. & Traning Stds. Comm.	92 DOJ 0829*[7]	West	06/22/93	
Michael Charles Kershner v. Criminal Justice Ed & Training Stds Comm	92 DOJ 0869	Morgan	08/11/93	
George Wilton Hawkins v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1081*[9]	Morgan	07/09/93	
Marilyn Jean Britt v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1088	Morrison	03/16/93	
Tim McCoy Deck v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1367	Chess	04/01/93	
Richard Zander Frink v. Criminal Justice Ed. & Traning Stds. Comm.	92 DOJ 1465	Nesnow	05/28/93	
Sherri Ferguson Revis v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 1756	Gray	03/23/93	
Mark Thomas v. Sheriffs' Ed. & Training Standards Commission	93 DOJ 0151	West	04/21/93	
George Wilton Hawkins v. Sheriffs' Ed. & Training Stds. Comm.	93 DOJ 0156*[9]	Morgan	07/09/93	
Lonnie Allen Fox v. Sheriffs' Ed. & Training Standards Commission	93 DOJ 0196	Morrison	08/09/93	
Alarm Systems Licensing Bd. v. Eric Hoover	93 DOJ 0201	Becton	07/12/93	
Alarm Systems Licensing Bd. v. Vivian Darlene Gaither	93 DOJ 0202	Chess	05/10/93	
William B. Lipscomb v. Private Protective Services Board	93 DOJ 0458	Morrison	06/01/93	
Private Protective Svcs. Bd. v. Alan D. Simpson	93 DOJ 0480	West	07/21/93	
LABOR				
Greensboro Golf Center, Inc. v. Labor	92 DOL 0204	Nesnow	04/15/93	
Ronald Dennis Hunt v. Labor	92 DOL 1319	Morgan	06/17/93	
Jeffrey M. McKinney v. Labor	92 DOL 1333	Morrison	06/21/93	
MORTUARY SCIENCE				
Board of Mortuary Science v. Triangle Funeral Chapel, Inc.	92 BMS 1169	Reilly	04/29/93	8:4 NCR 396
PUBLIC INSTRUCTION				
Frances F. Davis, Parent of Joseph E. Davis v. Public Instruction	93 EDC 0628	Mann	07/29/93	
STATE PERSONNEL				
Frances K. Pate v. Transportation	88 OSP 0340	Morrison	05/03/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1064*[4]	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1065*[4]	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1066*[4]	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1067*[4]	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1068*[4]	Mann	05/04/93	
Bernie B. Kellly v. Correction	91 OSP 0344	Morrison	05/27/93	
Brenda G. Mitchell v. Correction	91 OSP 0625	West	03/08/93	8:1 NCR 75
Adolph Alexander Justice Jr. v. Motor Vehicles, Transportation	91 OSP 0860	Chess	07/19/93	
Clayton Brewer v. North Carolina State University	91 OSP 0941	West	04/02/93	8:3 NCR 306
Sherman Daye v. Transportation	91 OSP 0951	West	05/07/93	
Donnie M. White v. Correction	91 OSP 1236	Morgan	04/05/93	
Gregory Samuel Parker v. Environment, Health, & Natural Resources	91 OSP 1344*[5]	Chess	05/20/93	
Renee E. Shepherd v. Winston-Salem State University	91 OSP 1391	Morgan	04/28/93	
Eva Dockery v. Human Resources	92 OSP 0010	Chess	05/03/93	
Lee P. Crosby v. Michael Kelly, William Meyer and EHR	92 OSP 0056	Gray	06/07/93	
Gregory Samuel Parker v. Environment, Health, & Natural Resources	92 OSP 0188*[5]	Chess	05/20/93	
Willie Granville Bailey v.Winston-Salem State University	92 OSP 0285	Morrison	03/10/93	
Julia Spinks v. Environment, Health, & Natural Resources	92 OSP 0313	Becton	04/12/93	8:4 NCR 382
James B. Price v. Transportation	92 OSP 0375	Gray	04/13/93	
I. Cary Nailling v. UNC-CH	92 OSP 0394	Becton	04/20/93	
Deborah Barber v. Correction	92 OSP 0396	Chess	03/04/93	
Laverne B. Hill v. Transportation	92 OSP 0431*[1]	West	03/08/93	
Jimmy D. Wilkins v. Transportation	92 OSP 0432*[1]	West	03/08/93	
Sarah W. Britt v. Human Resources, C.A. Dillon School, CPS	92 OSP 0455	West	05/26/93	8:6 NCR 484
Charles Robinson v. Revenue	92 OSP 0553	Morgan	07/21/93	
Anna L. Spencer v. Mecklenburg County Area Mental Health	92 OSP 0584	Becton	08/16/93	
Herman James Goldstein v. UNC-Chapel Hill et al.	92 OSP 0634	Morrison	05/04/93	

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
Glinda C. Smith v. Wildlife Resources Commission	92 OSP 0653	Morrison	03/12/93	
Cindy G. Bartlett v. Correction	92 OSP 0671	Morgan	06/08/93	
William Kenneth Smith Jr. v. Broughton Hospital (Human Resources)	92 OSP 0684	Becton	05/10/93	
Larry O. Nobles v. Human Resources	92 OSP 0732	Mann	04/23/93	
Beatrice Wheless v. Lise M. Miller, University Payroll Off., NC St. Univ.	92 OSP 0744*[10]	Morgan	07/16/93	
Sondra Williams v. Winston-Salem State University	92 OSP 0847	Morrison	08/06/93	
Willie Thomas Hope v. Transportation	92 OSP 0947	Morgan	03/23/93	
David Scales v. Correction	92 OSP 0989	Chess	06/24/93	
Suzanne Ransley Hill v. Environment, Health, & Nat. Res.	92 OSP 0992	Reilly	03/18/93	8:2 NCR 224
Herman James Goldstein v. UNC-Chapel Hill et al.	92 OSP 1047	Morrison	05/04/93	
Beatrice Wheless v. Lise M. Miller, University Payroll Off., NC St. Univ.	92 OSP 1124*[10]	Morgan	07/16/93	
John B. Sauls v. Wake County Health Department	92 OSP 1142	Reilly	03/08/93	8:1 NCR 88
Gilbert Jaeger v. Wake County Alcoholism Treatment Center	92 OSP 1204	Reilly	05/10/93	
Joseph Henry Bishop v. Environment, Health, & Natural Res.	92 OSP 1243	Reilly	03/05/93	
Glenn D. Fuqua v. Rockingham County Board of Social Services	92 OSP 1318	Morrison	08/03/93	
Willie L. Hudson v. Correction	92 OSP 1468	Becton	05/26/93	
Brenda K. Campbell v. Employment Security Commission	92 OSP 1505	Morrison	03/17/93	
Christie L. Guthrie v. Environment, Health, & Natural Resources	92 OSP 1555	Becton	05/31/93	
James B. Price v. Transportation	92 OSP 1657	Mann	03/19/93	
Jerry L. Jones v. N.C.S.U. Physical Plant	92 OSP 1661	Chess	07/06/93	
Betty Bradsher v. UNC-CH	92 OSP 1733	Becton	03/30/93	
Jamal Al Bakkat-Morris v. Glenn Sexton (DSS)	92 OSP 1741	Becton	03/24/93	
Brenda Kay Barnes v. Human Resources	92 OSP 1768	Morrison	03/17/93	
Larry G. Riddle v. Correction, Division of Prisons	92 OSP 1774	Gray	04/26/93	
Stevie E. Dunn v. Polk Youth Center	92 OSP 1789	Becton	04/19/93	
Buford D. Vieregge Jr. v. N.C. State University, University Dining	92 OSP 1796	Morrison	05/27/93	
Karen Canter v. Appalachian State University	93 OSP 0079	Reilly	06/15/93	
Terry Steve Brown v. Iredell County Health Department	93 OSP 0101	Morgan	08/06/93	
Barbara A. Johnson v. Human Resources	93 OSP 0103	Morrison	03/17/93	
Carrie P. Smith v. County of Stanly	93 OSP 0109	Becton	04/01/93	
George W. Allen v. Human Resources, Correction, Agri & EHNR	93 OSP 0111	Reilly	04/16/93	
William G. Fisher v. St Bd of Ed, Albermarle City Schools & Bd of Ed	93 OSP 0134	Becton	04/20/93	
Grace Jean Washington v. Caswell Center	93 OSP 0153	Morgan	06/03/93	
Clifton E. Simmons v. Correction	93 OSP 0159	Morrison	04/21/93	
Willie L. James v. Caswell Center	93 OSP 0171	Morgan	05/27/93	
Irving S. Rodgers v. C.A. Dillon, Division of Youth Services	93 OSP 0177	West	04/21/93	
Brian Dale Barnhardt v. State Highway Patrol	93 OSP 0251	Reilly	07/27/93	
F.R. "Don" Bowen v. Human Resources	93 OSP 0253	Morgan	08/06/93	
Michael L. Pegram v. Correction	93 OSP 0275*[8]	Reilly	06/28/93	
Jerry D. Doss Sr. v. Correction	93 OSP 0287	Gray	05/17/93	
Debbie Renee Robinson v. Correction	93 OSP 0383	Nesnow	06/07/93	
Michael L. Pegram v. Correction	93 OSP 0472*[8]	Reilly	06/28/93	
Hubert L. Holmes v. Transportation	93 OSP 0572	Reilly	08/17/93	
STATE TREASURER				
Herman D. Brooks v. Bd of Trustees /Teachers' & St Emp Ret Sys	91 DST 0566	Gray	04/13/93	
Henrietta Sandlin v. Teachers' & State Emp Comp Major Medical Plan	92 DST 0305	Morgan	04/12/93	
Mary Alyce Carmichael v. Bd/Trustees/Teachers' & St Emp Ret Sys	92 DST 1506	Chess	04/08/93	
W. Rex Perry v. Bd/Trustees/Teachers' & St Emp Ret Sys	93 DST 0133	West	08/12/93	8:11 NCR 992
TRANSPORTATION				
Yates Construction Co., Inc. v. Transportation	92 DOT 1800	Morgan	03/25/93	
UNIVERSITY OF NORTH CAROLINA HOSPITALS				
Constance V. Graham v. UNC Hospital	93 UNC 0269	Morgan	07/20/93	
Jacqueline Florence v. UNC Hospitals	93 UNC 0355	Becton	06/16/93	

STATE OF NORTH CAROLINA COUNTY OF NASH	IN THE OFFICE OF ADMINISTRATIVE HEARINGS 93 DST 0133
W. REX PERRY, ADMINISTRATOR OF THE ESTATE OF LEE E. PERRY, DECEASED Petitioner, v. THE BOARD OF TRUSTEES OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, Respondent.	RECOMMENDED DECISION

This contested case was heard on July 12, 1993, in Raleigh, North Carolina, by Administrative Law Judge Thomas R. West.

APPEARANCES

Petitioner, the Estate of Lee E. Perry, was represented by the Administrator, W. Rex Perry

Respondent was represented by Assistant Attorney General, Alexander McC. Peters

WITNESSES

The following testified for Petitioner:

W. Rex Perry - Brother of Lee E. Perry

Mickie Holland - Sister of Lee E. Perry

Alice Perry - Wife of W. Rex Perry

The following testified for Respondent:

Timothy S. Bryan - Chief, Member Services Section, Retirement Systems Division, Department of State Treasurer

OFFICIAL NOTICE

Official notice is taken of G.S. 135-5(f)

BURDEN OF PROOF

The burden is on Petitioner to show by the greater weight of the evidence that Respondent has improperly refused to pay interest accrued since the death of Lee E. Perry on the return of his contributions to the Retirement System.

FINDINGS OF FACT

1. Lee E. Perry was a permanent employee of the North Carolina Department of Transportation. As

a result of the employment, Perry became a vested member of the Teachers' and State Employees' Retirement System. Perry named his father as the beneficiary of his account.

2. Lee Perry died on December 25, 1988. Lee Perry had not been employed by the State of North Carolina for several years prior to his death.

3. At the time of his death, Lee E. Perry had not retired.

4. Delton Perry, Lee Perry's brother, preceded W. Rex Perry as the Administrator of Lee Perry's estate. Delton Perry was deceased at the time of this contested case.

5. G.S. 135-5(f) provides that when the Board of Trustees of the Retirement System receives satisfactory proof that a member has died prior to retirement, the amount of the member's accumulated contributions at the time of his death shall be paid.

6. The proof of death required by the Board of Trustees is a Certificate of Death. This is not set forth in any statute or publication cited to the judge.

7. On August 26, 1992, the Retirement System sent a letter to Lee Perry's father informing him that Lee Perry's account had $6,563.40 in it. The letter was generated because of a systematic review of inactive accounts which revealed to the System that Lee Perry had died. At the time the System wrote that the account had $6,563.40 in it, the System was aware Lee Perry was deceased and aware that it had no proof of that death on file.

8. Lee Perry's father had been deceased for several years prior to Lee Perry's death. W. Rex Perry, Lee Perry's brother, qualified as the Administrator of Lee Perry's estate and made a claim in October 1992 for the money in Lee Perry's retirement account.

9. A dispute arose between the parties during October 1992 about the amount to be paid to the Estate of Lee Perry. The estate contended that the sum of $6,563.40 was due the estate. The Retirement System took the position that $728.56 should be deducted from the sum because it represented interest earned after Lee Perry's death.

10. The System wrote the estate on November 18, 1992, taking the position that only the amount of accumulated contributions at the time of Lee Perry's death were payable and that law did not provide for the payment of any additional interest after the death of the member.

11. The Estate of Lee Perry filed the petition which initiated this contested case on January 26, 19993.

12. At the hearing, witnesses for the Estate testified as follows:

a. On a Friday afternoon in January 1989, Delton Perry, Rex Perry and Alice Perry telephoned the Retirement System to check the status of Lee Perry's account.

b. Alice, Rex Perry's wife, looked up the phone number for the System in the blue colored State Government pages of the Raleigh phone book. Rex dialed the number and then handed the phone to Delton.

c. Alice and Rex were present while Delton spoke on the phone. As a result of the conversation, the three understood that Lee had withdrawn his account and that there was no money.

d. In 1992, after Rex came into possession of the System's letter of August 26, 1992, Rex spoke by telephone with Patricia Painter, an employee of the Retirement Systems Division of the Department of State Treasurer. Painter told Rex Perry that the Retirement Systems Division moves records off of computer onto microfilm after two years. Rex Perry concluded that in

January 1989, when he, his wife, and Delton called the System, the person with whom they spoke checked a computer record and found no account for Lee since it had been inactive for several years and did not check the microfilm records.

The Perrys have recently telephoned the same number they got from the phone book in 1989 and have, both times, reached the System.

13. Timothy S. Bryan is the Chief of the Member Services Section of the Retirement Systems Division of the Department of State Treasurer.

14. Bryan testified as follows:

a. As members' accounts are withdrawn from the System, the record of the account is put on microfilm;

b. Computer files at the System show accounts as "open", "withdrawn" or "retired";

c. The files on computer at the System should be the same as the files on microfilm and microfiche;

d. The systematic review of accounts described in Finding of Fact #7 above involved the comparison of account numbers against the social security numbers of deceased persons. It was in this way that the System learned Lee Perry was deceased.

e. The letter would not have been generated if Lee Perry's file had shown his account as "withdrawn."

15. The System has not paid to Lee Perry's estate interest earned on Lee Perry's account after the date of his death (December 25, 1988). The System relies on G.S. 135-5(f) and believes it is not empowered to pay interest earned on the account after Lee Perry's death.

16. Bryan offered to settle this contested case by paying interest earned after Lee Perry's death if the estate could produce phone records showing a call to the System in 1989. The Perry's did not keep long distance phone records for calls made three years earlier.

17. The System would pay interest at 4% per annum on the contribution accumulated at Lee Perry's death if it were adjudged that the System informed the Estate in January 1989 that Lee Perry's retirement account had been withdrawn.

Based on the foregoing, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The testimony of the witnesses for the Estate is credible. Based on the judge's observation of the witnesses on the stand and in the hearing room, the undersigned concludes they would not spend one minute in litigation for money they did not believe they were owed.

2. Mr. Bryan is a credible witness.

3. Mr. Bryan's testimony of the manner in which the System's records are kept precludes a conclusion that the Perrys were given incorrect information as the result of any systemic flaw. The judge can conclude that the Perrys were told Lee Perry's account was "withdrawn" when, in fact, it was "open" only if the incorrect information was given by human error.

4. There is no evidence of who would have made the error or how.

5. The Estate has not shown by the greater weight of the evidence that the System misled the estate to the Estate's detriment.

Based on the foregoing, the undersigned makes the following

RECOMMENDED DECISION

The Board of the Teachers' and State Employees' Retirement System should pay interest at its standard rate from and after the death of Lee Perry on amounts contributed by him.

G.S. 135-5(f) does not specifically require payment of interest to the estates of deceased members who had attained at least five (5) years of membership service as it does to such members who are alive. Nor does the statute preclude payment of interest.

A failure to pay interest would unjustly enrich the System. A failure to pay interest would also place G.S. 135-5(f) into conflict with the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sec. 19 of the Constitution of North Carolina. This conflict can be avoided simply by concluding that G.S. 135-5(f) does not preclude the System from following the practice, standard among financial institutions, of paying interest for the use of other people's money.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the Board of Trustees of the Teachers' and State Employees' Retirement System.

This the 11th day of August, 1993.

Thomas R. West
Administrative Law Judge

STATE OF NORTH CAROLINA	IN THE OFFICE OF ADMINISTRATIVE HEARINGS
COUNTY OF GASTON	93 EHR 0219
R. L. STOWE MILLS, INC., Petitioner, v. N.C. DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES, DIVISION OF ENVIRONMENTAL MANAGEMENT, Respondent.	RECOMMENDED DECISION

This contested case was heard on July 6, 1993, in Charlotte, North Carolina, before Senior Administrative Law Judge Fred G. Morrison, Jr. The case was tried on stipulated facts and exhibits. Exhibits A through N were admitted into evidence. Following the hearing, the parties filed proposals for a recommended decision.

APPEARANCES

FOR THE PETITIONER: Christopher W. Loeb
D. Blaine Sanders
Robinson, Bradshaw & Hinson, P.A.
Charlotte, North Carolina

FOR THE RESPONDENT: Kathleen M. Waylett
Assistant Attorney General
North Carolina Department of Justice
Raleigh, North Carolina

ISSUE

Whether Respondent's determination that Petitioner is not eligible for reimbursement of cleanup costs from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund ("Fund") should be affirmed or reversed.

STIPULATED FACTS

1. Petitioner R.L. Stowe Mills, Inc. ("Stowe Mills") is a North Carolina corporation having its principal offices at 100 North Main Street, Belmont, North Carolina. Stowe Mills is engaged in the business of textile manufacturing.

2. On October 26, 1987, Stowe Mills purchased the property ("Property") located at 116 North Main Street, Belmont, North Carolina as a real estate investment. Stowe Mills purchased the Property from Margaret Anderson, who acquired the property in 1980.

3. At the time of the purchase, Harry Stone was operating Main Street Exxon, a gasoline service station, on the Property pursuant to an existing lease with Margaret Anderson. The lease continued after Stowe Mills' purchase of the property, and Mr. Stone paid rent to Stowe Mills under the terms of the existing lease.

4. At the time of Stowe Mills' purchase, three petroleum underground storage tanks were located on the Property. Two 4,000 gallon tanks were used for the storage and dispensing of motor fuel. One 550 gallon tank was used for the storage of used oil, which was generated by auto repair done at the gasoline station.

5. The tanks had been installed in 1961 by an unknown party. On April 22, 1986, Margaret Anderson registered the tanks with the Division of Environmental Management, listing herself as owner of the tanks.

6. Stowe Mills is not in the business of selling gasoline and has never operated a gasoline service station. Stowe Mills has owned and operated other underground storage tanks at its various textile manufacturing facilities.

7. On July 11, 1989, Stowe Mills requested in writing that Harry Stone vacate the Property on or before the end of September 1989. After further discussion, it was agreed that Mr. Stone would stop selling gasoline, but could continue repairing cars on the Property until December 1989. Gasoline was not sold from the tanks, and the tanks remained empty, after July 1989.

8. In October 1989, the Division of Environmental Management sent Margaret Anderson, as registered owner of the tanks, a Notification of Discrepancy in Underground Storage Tank Information form (undated) and attached Facility Data Sheet. The Notification and

   Facility Data Sheet were forwarded by Ms. Anderson to Stowe Mills, and were received by Stowe Mills in October 1989.

9. On October 23, 1989, Stowe Mills returned to the Division of Environmental Management the corrected Notification of Discrepancy in Underground Storage Tank Information form, showing Stowe Mills as the "Present Owner", and the updated Facility Data Sheet, showing Stowe Mills as the facility owner.

10. By letter dated October 23, 1989, Stowe Mills requested that payment of the 1989 tank fees be waived.

11. The Division of Environmental Management received, but did not respond to, Stowe Mills' letter dated October 23, 1989.

12. Stowe Mills' did not pay the annual fees for 1989 based upon its interpretation of the requirements for tanks taken out of service, the fact that it had sent to the Division of Environmental Management a request that the fees be waived, and the fact that no response was received. Stowe Mills did not know, prior to 1992, if its request for a waiver had, in fact, been received by the Division of Environmental Management.

13. Stowe Mills did not follow-up in writing, telephone, or otherwise contact the Division of Environmental Management to discuss or inquire as to the status of its request for a waiver of the 1989 tank fees. Stowe Mills was never told by the Division of Environmental Management that its request for a waiver had been allowed.

14. At no time has the Division of Environmental Management had a system to grant waivers or allow for the nonpayment of tank fees.

15. As of December 31, 1989, there were 25,000 billable facilities and 65,000 registered tanks on file with the Division of Environmental Management. The processing of registrations and the payment of tank fees were being handled by three full-time Division employees and two temporary employees. This fact was not known by Stowe Mills prior to the denial of reimbursement under the Commercial Leaking Petroleum Underground Storage Cleanup Trust Fund ("Fund") on January 9, 1993.

16. On or about February 2, 1990, Stowe Mills, through a tank removal contractor, removed the tanks from the Property. Stowe Mills' contractor informed it that petroleum products had been released from one or more of the 4000 gallon gasoline tanks. The release was reported to the Division of Environmental Management in March or April 1990. There was no release of petroleum products from the used oil tank.

17. At the time the release at the Property was discovered, no tank fees had been paid to the Fund by Stowe Mills.

18. Stowe Mills has incurred significant costs in removing and disposing of the tanks, investigating the release, removing and disposing of soil affected by the release, reporting to the Division of Environmental Management and undertaking other work related to the tanks as required by the laws and rules governing underground storage tanks and the groundwaters of the State. Further large expenditures may be required to clean up groundwater affected by the release.

19. Stowe Mills' environmental consultant, Atlantic Environmental Services, Inc., through Robert H. Pingry, requested a preliminary informal indication by the Division of Environmental Management whether Stowe Mills' costs incurred in the cleanup would be reimbursable from the Fund.

20. In a letter dated January 28, 1992, the Division of Environmental Management, through George C. Matthis, Jr., Supervisor of the State Trust Fund Group, preliminarily indicated to Mr. Pingry that it would deny a request for reimbursement from the Fund based upon the agency's interpretation of G.S. §143-215.94E(g), since the annual tank operating fees for 1989 had not been paid to the Fund prior to the discovery of the release. Stowe Mills argues that the agency's position was based on a rule which had not been adopted in accordance with the requirements of Chapter 150B of the General Statutes.

21. By letter dated May 12, 1992, Stowe Mills paid the 1989 fees in the amount of $150.00. Stowe Mills' check in the amount of $150.00 was negotiated by the Division and the $150.00 retained. Thereafter annual operating tank fees for 1990 were paid.

22. In October 1992, Stowe Mills submitted a formal application to the Division of Environmental Management for reimbursement from the Fund of cleanup costs. The Division of Environmental Management denied the application for reimbursement by letter (undated), which letter was received by Stowe Mills on or about January 9, 1993.

23. The application for reimbursement was denied based upon the agency's construction of G.S. §143-215.94E(g) to prohibit reimbursement from the Fund when an annual tank fee due pursuant to G.S. §143-215.94C had not been paid prior to the discovery of a release. Stowe Mills argues that the agency's action was based on its application of a rule which had not been adopted in accordance with the requirements of Chapter 150B of the General Statutes.

24. The agency's construction of the statute is based upon its determination that the intent of the General Assembly in enacting Part 2A, Article 21A of Chapter 143 of the General Statutes, was to protect the environment by helping to finance expensive groundwater cleanups with a compulsory insurance fund financed by the General Fund and annual tank fees, and its further determination that the Fund cannot be successful if fees are paid only after the injury is discovered.

25. There are no additional annual operating fees due with respect to the tanks in issue.

26. Administrative rules promulgated to implement Part 2A, Article 21A of Chapter 143 were not in effect when Stowe Mills' application for reimbursement was denied. Draft rules were published in the North Carolina Register on June 15, 1992, and final rules became effective February 1, 1993.

27. The Division of Environmental Management has permitted parties to obtain reimbursement from the Fund when annual tank fees were paid late, but prior to the discovery of the release for which cleanup costs are sought. The Division of Environmental Management has never paid a reimbursement claim from the Fund where the information submitted by the claimant showed that the claimant paid past-due fees owed to the Fund after the discovery of the release from the tanks, except where it could be shown that the claimant had paid fees on other tanks for which fees should not have been paid, resulting in an overall credit to the claimant's account.

28. Stowe Mills filed a timely Petition for Contested Case Hearing on February 22, 1993.

Based on the foregoing Stipulated Facts, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

Respondent did not err by refusing to reimburse Petitioner. Respondent had notified Petitioner in October of 1989 that tank fees in the amount of $150.00 were due and payable. Petitioner assumed the risk by not forwarding payment at once, which could have included a protest, before the release was discovered in February of 1990. Requesting a waiver was a waiver of reimbursement rights until fees were paid. If Petitioner was not responsible for fees, it would not be eligible for reimbursement from the fund.

A request for reimbursement was made by Petitioner's agent on January 14, 1992. Respondent promptly replied on January 28, 1992, that Petitioner would not be reimbursed because the 1989 tank fees had not been paid. Petitioner did not pay the 1989 fees until May 12, 1992, several months after being notified of the Respondent's decision, which also included the agency's position that the law required fees to be paid prior to the discovery or reporting of a discharge or release.

Based on the foregoing Stipulated Facts and Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDED DECISION

That the Respondent's decision to deny Petitioner's request for reimbursement be affirmed.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Department of Environment, Health, and Natural Resources.

This the 11th day of August, 1993.

Fred G. Morrison, Jr.
Senior Administrative Law Judge

STATE OF NORTH CAROLINA	IN THE OFFICE OF ADMINISTRATIVE HEARINGS
COUNTY OF WAKE	93 EHR 0380

HOLDING BROS., INC., Petitioner,	)	
v.	)	FINAL DECISION
N.C. DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES, Respondent.	)	

This matter came on for consideration before the undersigned Administrative Law Judge upon the Respondent's Motion to Dismiss filed July 21, 1993. The Petitioner filed no response.

DISCUSSION

The Petition alleges that the Notice of Violation (NOV) was issued erroneously to the Petitioner because the Petitioner did not own the Underground Storage Tank (UST) system.

The Motion to Dismiss contends that the issuance of a NOV does not create any dispute whereby the Respondent has deprived the Petitioner of any property, ordered the Petitioner to pay a fine or civil penalty, or otherwise substantially prejudiced the Petitioner's rights. See 150B-23(a).

A contested case is a proceeding to resolve a dispute between an agency and a person concerning the person's rights, duties or privileges. Rights, duties and privileges include licensing and the levying of a penalty. A petition, therefore, must contain allegations that the named agency, i.e., the Respondent, has deprived the person, i.e., the Petitioner, of property, has ordered him or her to pay a penalty, or has substantially prejudiced the person's rights. The Petition must describe how the agency deprived the person of rights, duties, or privileges. The agency must have exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law.

A NOV and "method to comply" does present the Petitioner with a choice - to comply or to be penalized. However, this choice does not substantially prejudice the Petitioner's rights. If the Petitioner chooses not to comply and a penalty is imposed, the Petitioner may then appeal to the Office of Administrative Hearings.

ORDER

The Office of Administrative Hearings lacks subject matter jurisdiction over this contested case. The Petition is therefore, **DISMISSED**. This is **FINAL DECISION** pursuant to G.S. 150B-36(c).

NOTICE

In order to appeal a Final Decision, the person seeking review must file a Petition in the Superior Court of Wake County or in the superior court of the county where the person resides. The Petition for Judicial Review must be filed within thirty (30) days after the person is served with a copy of the Final Decision. G.S. 150B-46 describes the contents of the Petition and requires service of the Petition on all parties.

This the 3rd day of August, 1993.

Dolores O. Nesnow
Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT
1	Administration
2	Agriculture
3	Auditor
4	Economic & Community Development
5	Correction
6	Council of State
7	Cultural Resources
8	Elections
9	Governor
10	Human Resources
11	Insurance
12	Justice
13	Labor
14A	Crime Control & Public Safety
15A	Environment, Health, and Natural Resources
16	Public Education
17	Revenue
18	Secretary of State
19A	Transportation
20	Treasurer
*21	Occupational Licensing Boards
22	Administrative Procedures
23	Community Colleges
24	Independent Agencies
25	State Personnel
26	Administrative Hearings

LICENSING BOARDS	CHAPTER
Architecture	2
Auctioneers	4
Barber Examiners	6
Certified Public Accountant Examiners	8
Chiropractic Examiners	10
General Contractors	12
Cosmetic Art Examiners	14
Dental Examiners	16
Dietetics/Nutrition	17
Electrical Contractors	18
Electrolysis	19
Foresters	20
Geologists	21
Hearing Aid Dealers and Fitters	22
Landscape Architects	26
Landscape Contractors	28
Marital and Family Therapy	31
Medical Examiners	32
Midwifery Joint Committee	33
Mortuary Science	34
Nursing	36
Nursing Home Administrators	37
Occupational Therapists	38
Opticians	40
Optometry	42
Osteopathic Examination & Reg. (Repealed)	44
Pharmacy	46
Physical Therapy Examiners	48
Plumbing, Heating & Fire Sprinkler Contractors	50
Podiatry Examiners	52
Practicing Counselors	53
Practicing Psychologists	54
Professional Engineers & Land Surveyors	56
Real Estate Commission	58
"Reserved"	59
Refrigeration Examiners	60
Sanitarian Examiners	62
Social Work	63
Speech & Language Pathologists & Audiologists	64
Veterinary Medical Board	66

Note: Title 21 contains the chapters of the various occupational licensing boards.

CUMULATIVE INDEX

(April 1993 - March 1994)

Pages	Issue
1 - 92	1 - April
93 - 228	2 - April
229 - 331	3 - May
332 - 400	4 - May
401 - 455	5 - June
456 - 502	6 - June
503 - 640	7 - July
641 - 708	8 - July
709 - 792	9 - August
793 - 875	10 - August
876 - 1006	11 - September

Unless otherwise identified, page references in this Index are to proposed rules.

ADMINISTRATION
Administration's Minimum Criteria, 5
Low-Level Radioactive Waste Management Authority, 232

ADMINISTRATIVE HEARINGS
Civil Rights Division, 370
General, 366
Rules Division, 367

AGRICULTURE
N.C. State Fair, 506
Plant Industry, 513
Veterinary Division, 515

COMMERCE
Alcoholic Beverage Control Commission, 408, 711
Banking Commission, 408, 798
Cemetery Commission, 810
Savings Institutions Division: Savings Institutions Commission, 461
State Ports Authority, 811

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES
Coastal Management, 279, 571, 962
Comprehensive Conservation and Management Plan, 882
Departmental Rules, 465
Environmental Management, 210, 556, 658, 797, 893
Health Services, 283, 335, 425, 465, 572, 709, 762, 966
Marine Fisheries, 28, 568
Mining: Mineral Resources, 829
NPDES Permit, 710
Soil and Water Conservation, 214
Wildlife Resources Commission, 32, 663, 831, 965

Zoological Park, 337

FINAL DECISION LETTERS
Voting Rights Act, 4, 407, 460, 795, 880

GOVERNOR/LT. GOVERNOR
Executive Orders, 1, 93, 229, 332, 401, 456, 641, 793, 876

HUMAN RESOURCES
Aging, Division of, 815
Blind, Services for the, 884
Deaf and Hard of Hearing, Services for the, 650
Facility Services, 94, 883
Medical Assistance, 25, 414, 553, 712, 888
Medical Care Commission, 644
Mental Health, Developmental Disabilities and Substance Abuse Services, 7, 413, 516
Social Services Commission, 237, 733

INSURANCE
Actuarial Services, 555, 657
Medical Database Commission, 463, 737

JUSTICE
Alarm Systems Licensing Board, 761
Attorney General, Office of the, 28
Criminal Justice Education and Training Standards Commission, 253
Criminal Justice Standards Division, 241
Private Protective Services Board, 252, 890
Sheriffs' Education and Training Standards Commission, 738

LABOR
OSHA, 97, 231, 278, 892

LICENSING BOARDS
Architecture, 43
Cosmetic Art Examiners, 969
Dental Examiners, State Board of, 763
Electrolysis Examiners, Board of, 841
Foresters, Registration for, 674
Geologists, Board of, 285
Medical Examiners, Board of, 591
Mortuary Science, Board of, 45, 342, 971
Nursing Home Administrators, 346
Pharmacy, Board of, 47, 354
Physical Therapy Examiners, 53, 767
Plumbing, Heating and Fire Sprinkler Contractors, 360
Practicing Psychologists, Board of, 844
Real Estate Commission, 53, 364
Social Work, Certification Board for, 428

LIST OF RULES CODIFIED
List of Rules Codified, 61, 290, 432, 593, 769, 845

PUBLIC EDUCATION
Elementary and Secondary Education, 427, 470

STATE PERSONNEL
Office of State Personnel, 286, 972

STATE TREASURER
Retirement Systems, 337

TAX REVIEW BOARD
Orders of Tax Review, 503

TRANSPORTATION
Highways, Division of, 669, 836

NORTH CAROLINA ADMINISTRATIVE CODE

The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars ($750.00). Individual volumes may also be purchased with supplement service. ***Renewal*** *subscriptions for supplements to the initial publication are available at one-half the new subscription price.*

PRICE LIST FOR THE SUBSCRIPTION YEAR

Volume	Title	Chapter	Subject	New Subscription*	Quantity	Total Price
1 - 53	Full Code		All titles	$750.00	_____	_____
1	1	1 - 38	Administration	90.00	_____	_____
2	2	1 - 24	Agriculture	75.00	_____	_____
3	2	25 - 52	Agriculture	75.00	_____	_____
4	3	1 - 4	Auditor	10.00	_____	_____
5	4	1 - 2	ECD (includes ABC)	45.00	_____	_____
6	4	3 - 20	ECD	90.00	_____	_____
7	5	1 - 2	Correction	60.00	_____	_____
8	5	3 - 4	Correction	30.00	_____	_____
9	6	1 - 4	Council of State			
	7	1 - 12	Cultural Resources	60.00	_____	_____
10	8	1 - 9	Elections	10.00	_____	_____
11	9	1 - 4	Governor/Lt. Governor	45.00	_____	_____
12	10	1 - 2	Human Resources	30.00	_____	_____
13	10	3A - 3K	Human Resources	90.00	_____	_____
14	10	3L - 3R	Human Resources (includes CON)	45.00	_____	_____
15	10	3S - 3W	Human Resources	30.00	_____	_____
16	10	4 - 6	Human Resources	30.00	_____	_____
17	10	7	Human Resources	30.00	_____	_____
18	10	8 - 9	Human Resources	30.00	_____	_____
19	10	10	Human Resources	30.00	_____	_____
20	10	11 - 14	Human Resources	60.00	_____	_____
21	10	15 - 17	Human Resources	45.00	_____	_____
22	10	18	Human Resources	75.00	_____	_____
23	10	19 - 30	Human Resources	90.00	_____	_____
24	10	31 - 33	Human Resources	30.00	_____	_____
25	10	34 - 41	Human Resources	60.00	_____	_____
26	10	42	Human Resources	45.00	_____	_____
27	10	43 - 51	Human Resources	90.00	_____	_____
28	11	1 - 19	Insurance	90.00	_____	_____
29	12	1 - 12	Justice	90.00	_____	_____
30	13	1 - 6	Labor	30.00	_____	_____
31	13	7	OSHA	45.00	_____	_____
32	13	8 - 16	Labor	45.00	_____	_____
33	14A	1 - 11	Crime Control and Public Safety	45.00	_____	_____
34	15A	1 - 2	EHNR (includes EMC)	90.00	_____	_____
35	15A	3 - 6	EHNR	45.00	_____	_____
36	15A	7	Coastal Management	45.00	_____	_____
37	15A	8 - 9	EHNR	30.00	_____	_____
38	15A	10	Wildlife	45.00	_____	_____

Continued

Volume	Title	Chapter	Subject	New Subscription*	Quantity	Total Price
39	15A	11 - 18	EHNR	90.00	_____	_____
40	15A	19 - 26	EHNR (includes Breathalizer)	75.00	_____	_____
41	16	1 - 6	Education	30.00	_____	_____
42	17	1 - 6	Revenue	75.00	_____	_____
43	17	7 - 11	Revenue	60.00	_____	_____
44	18	1 - 8	Secretary of State	30.00	_____	_____
45	19A	1 - 6	Transportation	90.00	_____	_____
46	20	1 - 9	Treasurer	45.00	_____	_____
47	21	1 - 16	Licensing Boards	75.00	_____	_____
48	21	17 - 37	Licensing Boards	75.00	_____	_____
49	21	38 - 70	Licensing Boards			
	22	1 - 2	Administrative Procedures	75.00	_____	_____
50	23	1 - 2	Community Colleges	10.00	_____	_____
51	24	1 - 3	Independent Agencies	10.00	_____	_____
52	25	1	State Personnel	60.00	_____	_____
53	26	1 - 4	Administrative Hearings	10.00	_____	_____
				Subtotal		_____
			(North Carolina subscribers add 6% sales tax)			_____
				Total	_____	_____

(Make checks payable to Office of Administrative Hearings.)

* This price includes the title in its current form plus supplementation for the subscription year.

MAIL TO:

OFFICE OF ADMINISTRATIVE HEARINGS
POST OFFICE DRAWER 27447
RALEIGH, NORTH CAROLINA 27611-7447

Office of Administrative Hearings
P. O. Drawer 27447
Raleigh, North Carolina 27611-7447

PLACE
STAMP
HERE

FOLD HERE

NORTH CAROLINA REGISTER
ORDER FORM

☐ Please enter my subscription for the *North Carolina Register* to start with the_____issue. ($105.00)/year subscription) (N.C. Subscribers please add sales tax.)

☐ Renew *North Carolina Register*

☐ Check Enclosed ☐ Please bill me

Please make checks payable to Office of Administrative Hearings

NAME _____ ADDRESS_____

CITY _____ STATE _____ ZIP _____

PHONE_____

(Return to Office of Administrative Hearings - fold at line, staple at bottom and affix postage.)

CHANGE OF ADDRESS:

1. Present Address

NAME

ADDRESS

CITY STATE ZIP

2. New Address

NAME

ADDRESS

CITY STATE ZIP

Office of Administrative Hearin
P. O. Drawer 27447
Raleigh, North Carolina 27611-7447

'SAFETY IN THE LAWS'

RALEIGH SEP 1 '93 NC

U.S. POSTAGE 290 METER 372330

FIRST CLASS MAIL

585
UNIV. OF NORTH CAROLINA
LAW LIBRARY CB# 3385
VAN HECKE-WETTACH 064-A
CHAPEL HILL NC 27599